

Sexual Harassment: The Law, 2020 Regulations and More

Maree Sneed

October 2022



YES/NO POLL

Did you participate in the ACES Title IX sexual harassment professional development in October of 2021?

**Understanding
the Audience**

POLL: Fist to Five

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

I feel comfortable explaining the August 2020 sexual harassment regulations to a colleague.

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

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

Over the last year, I have read at least one article involving 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

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

Over the last year, a student has reported that he/she/they was sexually harassed.

0 – Completely inaccurate

1 – Pretty inaccurate

2 – Slightly inaccurate

3 – Not accurate, but not inaccurate

4 – For the most part accurate

5 – Completely accurate

Agenda

- ❑ Title IX Overview
- ❑ Title IX: Laws and Regulations
- ❑ Title IX and LGBTQ+ Students
- ❑ 2020 Title IX Sexual Harassment Regulations and Guidance
- ❑ Recent OCR Voluntary Resolutions
- ❑ Biden Administration's Proposed Title IX Regulations
- ❑ Connecticut Bullying/Harassment Laws
- ❑ Q&A

Title IX Overview

Title IX

- **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?

- 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?

- Elementary through professional school
- Staff and students
- Men/boys, women/girls, and gender-nonconforming individuals
- 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)



How is a school required to respond to potential Title IX violations?

- Schools have an affirmative obligation to respond appropriately to potential Title IX violations
- The required response depends on the type of sex discrimination
 - Sexual harassment
 - Other types of sex discrimination



What are some examples of conduct that may violate Title IX?

- A principal observes that a math teacher calls on boys more frequently than she calls on girls.
- A gay student reports to a principal about being called names in social studies class.
- A teacher finds sexually explicit images and words spray painted on the lockers in the front hallway of a school.
- A district refuses to provide accommodations to transgender girls who are not comfortable using the boys' restrooms.
- A student sexually assaults a classmate.
- A pregnant high school student is not granted membership in the National Honor Society.

Required response

	Sexual harassment	Other sex discrimination
What type of sex-based conduct does this apply to?	<ol style="list-style-type: none"> 1. Quid pro quo 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” 3. Sexual assault, dating violence, domestic violence, stalking 	Hostile environment – the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school
When is a school required to respond?	When it has actual knowledge of the conduct	When it knows or reasonably should know about the conduct
How must a school respond?	Promptly and not with deliberate indifference (i.e., not clearly unreasonable in light of the known circumstances)	Promptly and equitably
Other notes	The regulations include specific requirements and grievance procedures that must be followed	Same as required response to discrimination based on other protected statuses (e.g., race, disability)

What are some of the risks of violating Title IX?

- Private litigation
 - Students (and parents on behalf of their children) may sue districts. School districts may have to pay money damages when districts are found to have violated 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

- The OCR is part of the U.S. Department of Education (“ED”).
- What OCR does:
 - Policy guidance
 - Technical assistance
 - Civil Rights Data Collection (“CRDC”)
 - Enforcement
 - Complaint process
 - Compliance reviews
 - Voluntary resolution
 - Administrative hearing
 - DOJ referral

“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.”

Catherine Lhamon, ED Assistant Secretary for Civil Rights

- Ms. Lhamon is Assistant for Civil Rights at ED.
- She served in this role during the Obama Administration.



More on DOJ

- What DOJ does:
 - Equal Education Opportunities (“EEO”) section in DOJ responsible for enforcing Title IX
 - EEO section led by Shaheena Simone
 - EEO section has authority to:
 - Review complaint from OCR
 - Investigate complaint and file lawsuit
 - Intervene in private lawsuit

“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.”

Kristen Clarke, DOJ Assistant Attorney General for Civil Rights

- Prior to becoming Assistant Attorney General, Ms. Clarke worked at DOJ and the NAACP Legal Defense Fund.



TRUE/FALSE POLL



Title IX rules protect both students and employees.

TRUE/FALSE POLL



Sexual harassment is the only type of sex discrimination prohibited by Title IX.

YES/NO POLL

A mother claims that her child's third grade teacher has selected only boys to be in the "top" reading group

Is this a Title IX violation?

YES/NO POLL

A male teacher claims he was denied a promotion because he wears pink and purple shirts.

Is this a Title IX violation?

YES/NO POLL

A student reports to her guidance counselor that her physical education teacher calls her derogatory names because of her gender transition.

Is this a Title IX violation?

Title IX: The Law and Regulations

Overview of Sexual Harassment Guidance/Regulations

- **1975** -- Regulations first issued by the Department of Health, Education, and Welfare (ED's predecessor) did not address sexual harassment as a form of sex discrimination.
- **1997–2020** -- ED addressed sexual harassment through a series of guidance documents.
- **2018** – Trump Administration published proposed regulations to address sexual harassment.
- **2020** – Trump Administration published regulations addressing sexual harassment on May 19, 2020. Regulations became effective August 14, 2020.
- **September 4, 2020** -- Trump Administration issued a Q&A regarding implementation of 2020 regulations.

Title IX in the headlines: Trump Administration

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

Title IX in the headlines: Trump Administration

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

Biden Administration and Title IX

- **January 2021** – President Biden issued [Executive Order](#) on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.
- **Jan. 15, 2021**-- Biden Administration issued additional Q&A ([Part 1](#) and [Part 2](#)) to supplement the Sept. 4, 2020 Q&A.
- **March 8, 2021** -- President Biden issued [Executive Order](#) on Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity.
- **April 6, 2021** -- OCR announced comprehensive review of Title IX regulations.
- **June 16, 2021** -- OCR issued [Notice of Interpretation](#) confirming that prohibition on sex discrimination includes discrimination based on sexual orientation or gender identity.
- **July 2021** -- OCR issues a [Q&A and related Appendix](#) regarding its interpretation of schools' obligations under the regulations.

Biden Administration and Title IX

- **June 23, 2022** – Biden Administration proposed changes to 2020 sexual harassment regulations.
- **September 12, 2022** – ED established deadline for providing comments to proposed regulations.
- **September 13, 2022 – to ???** – ED is reviewing comments.

There is no date when changes to regulations will be final.

Title IX in the headlines: Biden Administration

BRIEF

HIGHER ED DIVE

New Biden executive order calls for review of Title IX rule

Published March 8, 2021



[Jeremy Bauer-Wolf](#)
Reporter

Title IX Regulations: Biden Administration Signals Changes Ahead

Saturday, March 13, 2021

THE
NATIONAL LAW REVIEW

Title IX in the headlines: Biden Administration

EDUCATION

Biden administration announces new protections for transgender students

POLITICO

The department's Office for Civil Rights has vowed to "fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity in education programs and activities that receive federal financial assistance from the department."

By **BIANCA QUILANTAN**
06/17/2021 02:32 PM EDT

Biden Team: Schools Can Go Beyond Trump Rules in Response to Alleged Sexual Misconduct

EducationWeek®



By [Andrew Ujifusa](#) — July 20, 2021 ⌚ 3 min read

Title IX and LGBTQ+ Students

LGBTQ+ students: Executive Order to expand *Bostock*

Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

JANUARY 20, 2021 • PRESIDENTIAL ACTIONS

- “Children should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports. . . All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.”
- “In *Bostock v. Clayton County*, 590 U.S. ____ (2020), the Supreme Court held that Title VII’s prohibition on discrimination ‘because of . . . sex’ covers discrimination on the basis of gender identity and sexual orientation. Under *Bostock*’s reasoning, laws that prohibit sex discrimination — **including Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 et seq.)**, . . . along with their respective implementing regulations — prohibit discrimination on the basis of gender identity or sexual orientation, so long as the laws do not contain sufficient indications to the contrary.” (emphasis added)

Bostock v. Clayton County, No. 17-1618, 590 U.S. ____ (2020)

- **Issue:** Whether an employer can fire an employee for their sexual orientation or for being a transgender person.
- **Holding:** Title VII of the Civil Rights Act of 1964 protects employees against discrimination because of their sexual orientation or gender identity.
 - Discrimination on the basis of sexual orientation or gender identity is necessarily also discrimination “because of sex” as prohibited by Title VII.
 - Employers discriminating against gay or transgender employees accept a certain conduct (e.g., attraction to women) in employees of one sex but not in employees of the other sex.

Bostock and Title IX

- At least two federal circuit courts have extended the holdings in *Bostock* to Title IX, thus granting additional protections to transgender students.
- In *Adams v. School Board of St. Johns County Florida*, the Eleventh Circuit held that a school board violated a student's rights under Title IX when it required a transgender male student to use the girls' restroom.
 - Judge Beverly Martin, writing for the 2-1 majority stated, “A public school may not punish its students for gender nonconformity. Neither may a public school harm transgender students by establishing arbitrary, separate rules for their restroom use. The evidence at trial confirms that Mr. Adams suffered both these indignities.”
- In *G.G. v. Gloucester County*, the Fourth Circuit similarly held that a school district's policy that prohibited a transgender student from using the men's restroom violated Title IX. The U.S. Supreme Court declined to take up the case.
- Other federal circuits, such as the Ninth Circuit, have held that school district policies that are trans-inclusive do **not** violate Title IX.
- These decisions have immediate effects for public school districts in Alabama, Florida, Georgia, Maryland, North Carolina, Virginia, and West Virginia. Other circuit courts may take similar positions in the near future.

Takeaways for schools

- Where conduct may be based on an individual's actual or perceived sexual orientation or gender identity, schools have an affirmative duty to investigate and respond appropriately
- Schools must assess whether (i) sexual harassment or (ii) discriminatory harassment based on sex has occurred
- Schools may still punish bad behavior that does not rise to the level of sexual harassment or discriminatory harassment

Bostock and Title IX: Sports

Soule v. Conn. Ass'n of Schools

- Connecticut law bars discrimination on basis of “gender identity or expression.”
- Connecticut Interscholastic Athletics Conference policy **permits** transgender students to compete in sports based on gender identity.
- Plaintiffs challenged policy as violating Title IX by giving transgender female athletes competitive advantage.
- Court dismissed on April 25, 2021, ruling that case was moot.
- Plaintiffs appealed to 2nd circuit. Case was argued on September 29, 2022.

Hecox v. Little

- Idaho law requires participation in interscholastic and intercollegiate sports teams be based on “biological sex”.
- Law **bars** transgender females from participating in girls’ sports teams.
- Hecox challenged policy as violating Title IX.
- 9th Circuit remanded case to district court in June 2021 for mootness determination.
- On July 18, 2022, district court held that case was not moot. Court said Hecox could continue to litigate her claims while law is blocked.

Ripped from Headlines: Soule v. Connecticut Ass'n of Schools

A battle over Title IX: Can it be used to exclude trans athletes?

- By [Anne Branigin](#), [Washington Post](#), Updated September 29, 2022

“An appeals court heard arguments Thursday on whether allowing trans athletes to participate in youth sports discriminates against their cisgender classmates

On Thursday, a federal appellate court heard arguments concerning the rights of transgender student-athletes.

But unlike most other legal challenges of this kind, the plaintiffs aren't trans people suing to have their rights recognized.

Instead, a group of young cisgender women, represented by the Christian conservative legal organization Alliance Defending Freedom, is arguing that allowing trans athletes to compete on teams that align with their gender identity violates the rights of cis women.

The case, *Soule et al v. Connecticut Association of Schools et al*, was dismissed by a federal district judge last year, but it has proved to be consequential.”

Ripped from Headlines: Soule v. Connecticut Ass'n of Schools (continued)

“How could this case affect the future of student athletics?”

If the case is dismissed or decided in favor of the defendants — the most likely eventual scenario — it would affirm that allowing trans students to compete in sports categories aligning with their gender identity is consistent with federal law and may even be required, Skinner-Thompson said.

If judges rule in favor of the plaintiffs, the ruling would create a conflicting interpretation of Title IX that would need to be settled by the courts.”

DOJ Letter to Attorney Generals

Thursday, March 31, 2022

“Justice Department Reinforces Federal Nondiscrimination Obligations in Letter to State Officials Regarding Transgender Youth

- The Justice Department announced today that it issued a letter to all state attorneys general reminding them of federal constitutional and statutory provisions that protect transgender youth against discrimination, including when those youth seek gender-affirming care.
- “The Department of Justice is committed to ensuring that all children are able to live free from discrimination, abuse and harassment,” said Assistant Attorney General Kristen Clarke for the Justice Department’s Civil Rights Division. “Today’s letter reaffirms state and local officials’ obligation to ensure that their laws and policies do not undermine or harm the health and safety of children, regardless of a child’s gender identity.”

TRUE/FALSE POLL



Districts only need to worry about OCR regulations, not what's happening in the courts.

TRUE/FALSE POLL



The only way someone can be discriminated against based on their gender identity or sexual orientation is if the definition of “sexual harassment” is met.

TRUE/FALSE POLL



Allowing trans athletes to compete on teams that align with their gender identity violates the rights of cis women.

2020 Title IX Sexual Harassment Regulations and Guidance

Where can I find the text of the 2020 regulations?

You can find the sexual harassment 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 2020 regulations begins at page 30,572. The information leading up to the text is called the “preamble.”

What do the 2020 regulations require?

Generally, the 2020 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.

Summary of basic steps in 2020 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 process for filing a formal complaint.
3. Investigator leads investigation after formal complaint is in place and written notice is given to involved individuals and their parents/guardians. Investigator gathers and reviews evidence, allows responses to the evidence, and prepares an investigative report; 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 other side. Decision-maker reviews all materials and makes written responsibility determination – an impartial determination as to whether alleged conduct occurred – including sanctions.

Biden Administration Title IX guidance



- Includes 67 Questions & Answers that clarify how OCR interprets schools' existing obligations under Title IX sexual harassment regulation.
- Provides Appendix with examples of Title IX procedures that may be helpful to or adapted by schools/districts as appropriate.

July 2021 ED Title IX guidance

Preventing Sexual Harassment

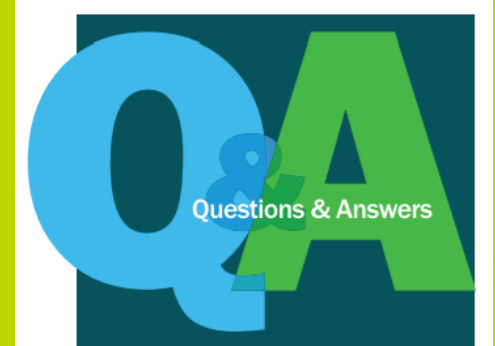
- While Title IX regulations focus on district's required response to instances of alleged sexual harassment, district also should consider strategies to prevent sexual harassment from occurring.
- “OCR encourages schools to undertake prevention efforts that best serve the needs, values, and environment of their own educational communities.” (Q3)

Responding to Sexual Harassment

- District may do more – but they must not do less – than what is required under Title IX sexual harassment regulations.
- “A school may take additional actions so long as those actions do not conflict with Title IX or the 2020 amendments” (Q2)

ED Title IX guidance (July 2021)

“A school must follow its policies for receiving and responding to reports of sexual harassment and may not adopt a policy of putting investigations or proceedings on hold due to COVID-19.”
(Q29)



Who's Who – Title IX Coordinator

- 2020 regulations require 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.
- 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

- As a practical matter, certain Title IX Coordinator responsibilities are more appropriately carried out at one level – district or school.
- 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.
- 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

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

Who's who – Decision-maker

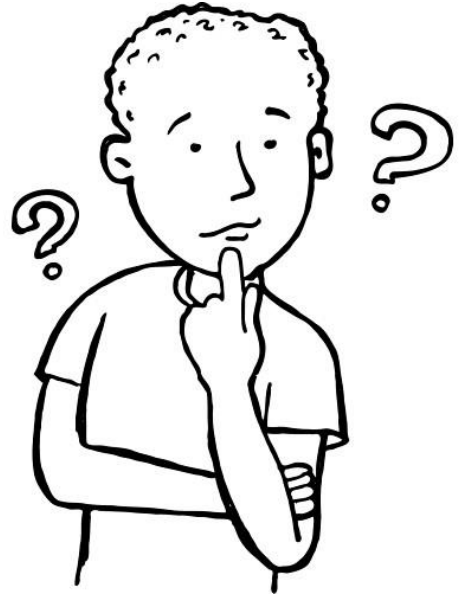
- School-based Decision-maker reaches the responsibility determination by applying the standard of evidence selected by the district: “preponderance of the evidence” or “clear and convincing.”
- Neither the district-level Title IX Coordinator, school-based Title IX Coordinator, nor Investigator may also 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).

“Actual knowledge”

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); or
- 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...

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

“Education program or activity”



- “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)

TRUE/FALSE POLL



The 2020 regulations apply to all sex discrimination prohibited by Title IX.

Required response

	Sexual harassment	Other sex discrimination
What type of sex-based conduct does this apply to?	<ol style="list-style-type: none"> 1. Quid pro quo 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” 3. Sexual assault, dating violence, domestic violence, stalking 	Hostile environment – the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school
When is a school required to respond?	When it has actual knowledge of the conduct	When it knows or reasonably should know about the conduct
How must a school respond?	Promptly and not with deliberate indifference (i.e., not clearly unreasonable in light of the known circumstances)	Promptly and equitably
Other notes	The regulations include specific requirements and grievance procedures that must be followed	Same as required response to discrimination based on other protected statuses (e.g., race, disability)

TRUE/FALSE POLL



Districts do not have to follow the 2020 regulations unless they are sure sexual harassment has occurred.

July 2021 Title IX guidance

“At any school level – elementary, secondary, or postsecondary – actual knowledge refers to notice of conduct that *could* constitute sexual harassment . . . Thus, the preamble explains that a school must respond promptly and appropriately when it receives notice of alleged facts that, if true, could be considered sexual harassment under the 2020 amendments.” (Q18)



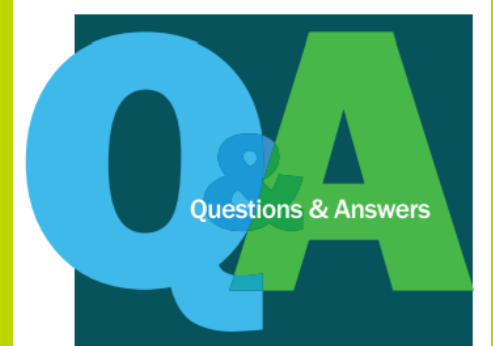
TRUE/FALSE POLL



If bad behavior occurs that is not covered by definition of sexual harassment, districts may act to investigate and respond.

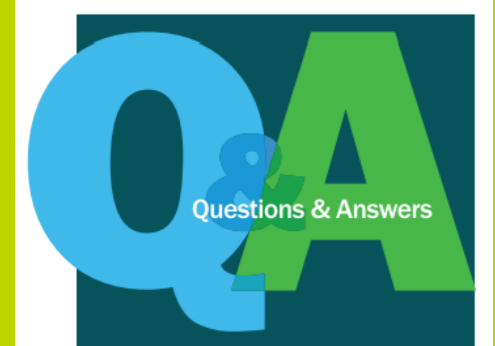
July 2021 Title IX guidance

“A school has discretion to respond appropriately to reports of sexual misconduct that do not fit within the scope of conduct covered by the Title IX grievance process. This may include, for example, reported sexual misconduct that a) occurs outside of a school’s education program or activity; b) occurs outside of the United States; or c) causes harm in the school environment that does not fit within the definition [of “sexual harassment” in the regulations].” (Q7)



July 2021 Title IX guidance

“OCR encourages schools to develop and enforce their codes as an additional tool for ensuring safe and supportive educational environments for all students. OCR does not enforce school codes of conduct but may investigate complaints that a school’s code of conduct treated students differently based on sex, including sexual orientation or gender identity.”



Response Checklist

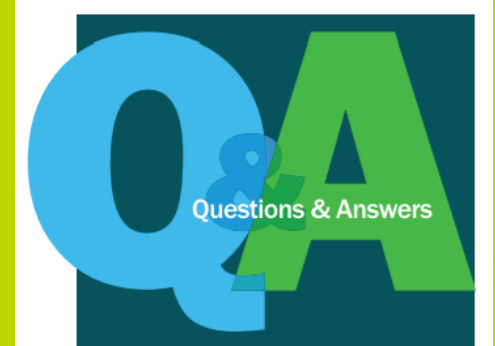
- Incident-specific response:
 - Victim(s) and parents
 - Perpetrator(s) and parents
 - Staff who knew or should have known
- School-wide response:
 - Students
 - Staff
 - Parents



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

July 2021 Title IX guidance

“The 2020 amendments permit a parent or legally authorized guardian to act on behalf of the complainant or respondent . . . If a parent or guardian has a legal right to act on a complainant or respondent’s behalf, this authority applies throughout all aspects of the Title IX matter, including throughout the grievance process.” (Q40)



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

- 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.

Responding to Allegations of Sexual Harassment

The basic command

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

Responding to Allegations of Sexual Harassment

First, ensure that procedures comply with 2020 regulations.

- 2020 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 and
 - General statement regarding nondiscrimination on the basis of sex.
- District must adopt and publish grievance procedures that provide for 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 complaint of alleged sex discrimination, how to report or file formal complaint of alleged sexual harassment, and how district will respond.

Responding to Allegations of Sexual Harassment

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 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.

Responding to Allegations of Sexual Harassment

- School must ensure that it is not deliberately indifferent in responding to sexual assault or sexual harassment.
- Deliberate indifference occurs when a school has actual knowledge of sexually assault or sexual harassment and the school's response is clearly unreasonable based on the known circumstance.

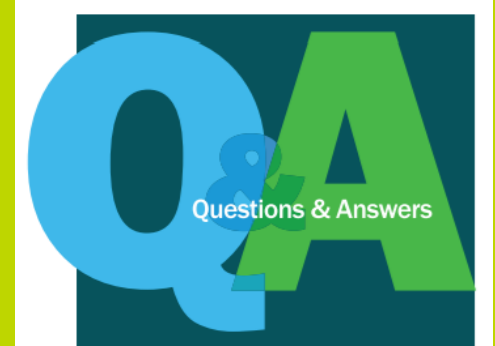
TRUE/FALSE POLL



- In October of her freshman year, Jane said, she was raped in a school bathroom. Within a week, she reported assault to police and told an assistant principal what had happened.
- According to Jane, the assistant principal warned her that if the school opened an investigation and her alleged attacker was found innocent, she would be suspended for being in the boys' bathroom. She remembers the assistant principal saying that it would go on her school record and possibly damage her chances of getting into college. He also told her not to talk to anyone else about the alleged rape.
- Would the assistant principal's response be found to be deliberately indifferent?

July 2021 Title IX guidance

“A school should never assume a complainant of sexual harassment is lying or that the alleged harassment did not occur . . . [T]he presumption [of innocence] is designed to ensure that investigators and decision-makers serve impartially and do not prejudge that the respondent is responsible for the alleged harassment, [not to] decline services to a complainant or to make assumptions about a complainant’s credibility.” (Q36)



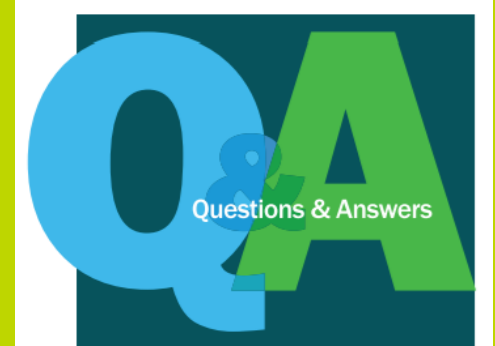
Responding to Allegations of Sexual Harassment

Overview of select general requirements for the grievance process

- Designate reasonably prompt time-frames for resolution and range of possible disciplinary actions.
- Use either “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 2020 regulations, many of which are addressed in this professional development.

July 2021 Title IX guidance

“The preamble explains that the preponderance-of-the-evidence standard means the decision-maker must determine whether alleged facts are more likely than not to be true. It also explains that the clear-and-convincing-evidence standard means the decision-maker must determine whether it is ‘highly probable’ that the alleged facts are true.” (Q56)



TRUE/FALSE POLL



District may use different evidentiary standards for employees and students.

July 2021 Title IX guidance

“The preamble explains that if a school has a collective bargaining agreement in place that requires the school to use the clear-and-convincing standard for sexual harassment investigations involving employees, it is required under the 2020 amendments to use only the clear-and-convincing standard for sexual harassment investigations involving students as well. In those cases, the preamble indicates that the school may work cooperatively with its employee unions to renegotiate the standard of proof used in employee sexual harassment investigations.” (Q57)



Responding to Allegations of Sexual Harassment

Revisiting the basic steps outlined in the 2020 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 investigation the formal complaint is made and written notice is given to involved individuals and their parents/guardians. Investigator gathers and reviews evidence, allows responses to evidence, and prepares investigative report; involved individuals and their parents/guardians review and respond to report.
4. Decision-maker provides opportunity for involved individuals and their parents/guardians to prepare written questions to be answered by other side. Decision-maker reviews all materials and makes a written responsibility determination – an impartial determination as to whether alleged conduct occurred – including sanctions.

Meeting to Offer Supportive Measures

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

Formal Complaint to Initiate Grievance Process

- No investigation of alleged sexual harassment may occur until after formal complaint has been filed.
- Formal complaint must be filed by alleged victim or parent/guardian. Complaint must describe sexual harassment allegations and request that district investigate.
 - Formal complaint may be filed at any time as long as alleged victim is “participating in or attempting to participate in the education program or activity” of district at time of filing.
 - District should create a standard formal complaint form.
- School-based Title IX Coordinator may initiate 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).

July 2021 Title IX Guidance

“The preamble gives several examples of situations of a complainant ‘attempting to participate’ in a school’s education program, including when a complainant:

1. Has withdrawn from the school due to alleged sexual harassment and expresses a desire to re-enroll if the school responds appropriately to the allegations,
2. Has graduated but intends to apply to a new program or intends to participate in alumni programs and activities,
3. Is on a leave of absence and is still enrolled as a student or intends to re-apply after the leave of absence, or
4. Has applied for admission.

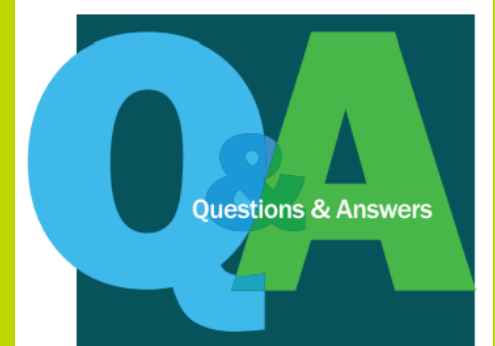
It is important to keep in mind that this requirement concerns a complainant’s status at the time a formal complaint is filed and is not affected by a complainant’s later decision to remain or leave the school.” (Q23)



July 2021 Title IX Guidance

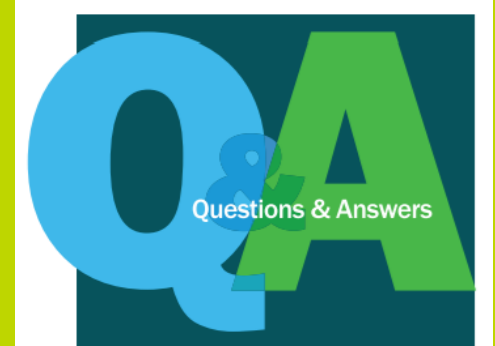
“In some cases, a school may be in violation of Title IX if the Title IX Coordinator does not [file a formal complaint]. For example, the preamble explains that if a school ‘has actual knowledge of a pattern of alleged sexual harassment by a perpetrator in a position of authority,’ OCR may find the school to be deliberately indifferent (i.e., to have acted in a clearly unreasonable way) if the school’s Title IX Coordinator does not sign a formal complaint, ‘even if the complainant . . . does not wish to file a formal complaint or participate in a grievance process.’”

(continued on next slide)



July 2021 Title IX Guidance

“Put simply, there are circumstances when a Title IX Coordinator may need to sign a formal complaint that obligates the school to initiate an investigation regardless of the complainant’s relationship with the school or interest in participating in the Title IX grievance process. This is because the school has a Title IX obligation to provide all students, not just the complainant, with an educational environment that does not discriminate based on sex.” (Q24)



YES/NO POLL

A high school stopped going to Calculus class, and as a result failed the class and did not graduate. After the school year was over, student says she failed Calculus because she was sexually assaulted by another student in Calculus class.

**Continue with
the grievance
process?**

YES/NO POLL

A teacher tells the principal that her department head continues to tell “raunchy” jokes at department meetings and after school when he comes into her classroom to discuss events of the day. Teacher tells the assistant principal, but does not want to file a formal complaint.

**Continue with
the grievance
process?**

YES/NO POLL

An anonymous student says Dan frequently calls several sophomores who have come out as being gay derogatory names. Student does not provide names of sophomores.

**Continue with
the grievance
process?**

YES/NO POLL

A 4th grader reports to his parents that a teacher's aide hugs him every day in class and says the he has told the aide to stop hugging him. Student is embarrassed and his parents/guardians do not want to file a formal complaint.

**Continue with
the grievance
process?**

Response checklist revisited

- 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 Formal Complaint Filed

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

Notice

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

Investigation

General requirements to remember

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

Responsibilities of Investigators

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

Investigation: Step #1

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

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

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

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

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

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

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

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

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

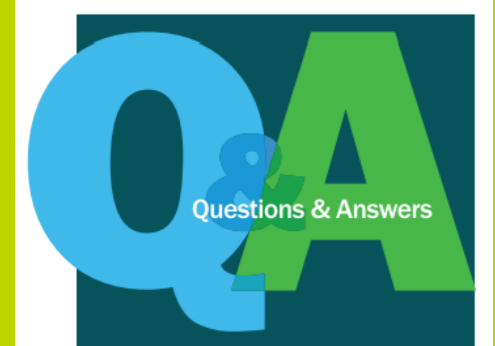
- District must use written questions and answers as part of grievance process.
- Decision-maker must:
 - Allow the involved individuals and their parents/guardians to submit written, relevant questions to ask the other side (including witnesses) and
 - Decision-maker must explain any decision to exclude a question as irrelevant.
 - The alleged victim's prior sexual behavior is not relevant unless offered to prove that someone other than alleged perpetrator committed alleged conduct or to prove consent. Consent is not defined in the 2020 regulations.
 - Provide each side with answers to their questions.
 - Allow for additional, limited follow-up questions.

Responsibility Determination

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

ED Title IX guidance (July 2021)

“When a school finds a respondent responsible for sexual harassment under its Title IX grievance process, the school must provide remedies to the complainant that are ‘designed to restore or preserve equal access to the [school’s] education program or activity.’ These remedies may include the same individualized services that the school provided to the complainant as supportive measures, additional services, or different services.” (Q21)



Appeal

- District must provide for appeal of responsibility determination or dismissal of formal complaint if an involved individual or his or her parents/guardians asserts that:
 - A procedural irregularity affected the outcome;
 - New evidence may affect the outcome and was not previously reasonably available; or
 - 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 initial Decision-maker, Investigator or Title IX Coordinator.

Dismissal of Formal Complaint

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

TRUE/FALSE POLL



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

TRUE/FALSE POLL



The Title IX Coordinator
may also be the
Investigator.

TRUE/FALSE POLL



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

TRUE/FALSE POLL



In some circumstances, district have discretion regarding whether to dismiss a formal complaint.

Professional Development Requirements

- District must provide professional development to individuals designated as Title IX Coordinator, Investigator, Decision-maker, or Facilitator of informal resolution process.
- District must make training materials publicly available on district website.
- As best practice, district should provide professional development to other employees who are not part of the core Title IX team.

Professional Development Requirements

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

Recordkeeping Requirements

District must maintain certain records for 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; and
 - 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 materials.

Emergency Removal and Administrative Leave

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

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

Informal Resolution Process

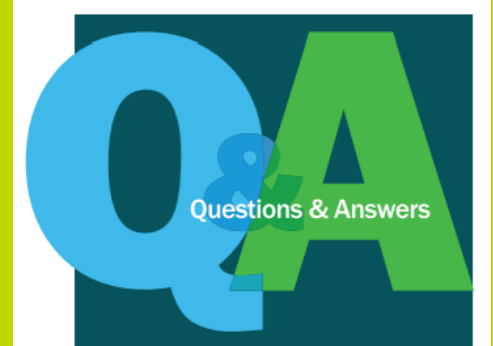
Though not required, district may offer informal resolution process to involved individuals and their parents/guardians after formal complaint has been filed.

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

July 2021 Title IX guidance

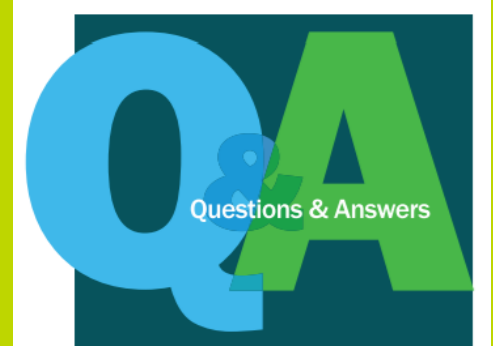
“The 2020 amendments explain that they leave the term ‘informal process’ undefined to allow a school the discretion to adopt whatever process best serves the needs of its community. The amendments do not require that the parties interact directly with each other as part of an informal resolution process; mediations are often conducted with the parties in separate rooms and the mediator conversing with each party separately.”

(continued on next slide)



July 2021 Title IX guidance

“The parties’ participation in mediation or restorative justice, if offered, should remain a decision for each individual party to make in a particular case, and neither party should be pressured to participate in the process. Schools may exercise discretion to make fact-specific determinations about whether to offer informal resolution in response to a complaint. The Department will not require the parties to attempt mediation in its enforcement of Title IX.” (Q58)



Other aspects of the 2020 regulations

- 2020 regulations contain provisions prohibiting retaliation.
- District may consolidate formal complaints where sexual harassment allegations arise out of 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 hearing rules apply equally to both sides.

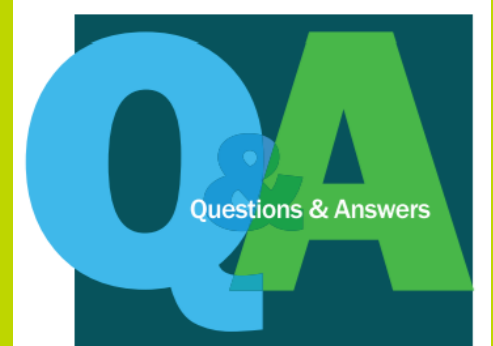
Sexual Harassment Regulations: Relation to Other Laws

- District may not restrict rights protected under U.S. Constitution, including the First, Fifth, and Fourteenth Amendments.
- 2020 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, 2020 regulations preempt state and local law.
- When employees are involved in alleged sexual harassment, district may need to consider its obligations under both Title IX and Title VII.
- Districts still must respond to complaints of sex discrimination that do not meet the definition of “sexual harassment.”



July 2021 Title IX guidance

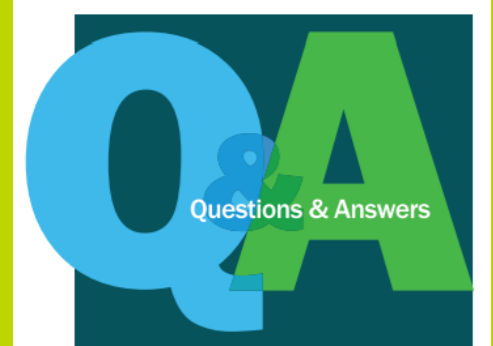
“The 2020 amendments explain that the grievance process required for formal sexual harassment complaints does not apply to complaints alleging discrimination based on pregnancy, different treatment based on sex, or other forms of sex discrimination. Instead, the 2020 amendments state that schools must respond to these complaints using the ‘prompt and equitable’ grievance procedures that schools have been required to adopt and publish since 1975, when the original Title IX regulations were issued.”
(Q64)



July 2021 Title IX guidance

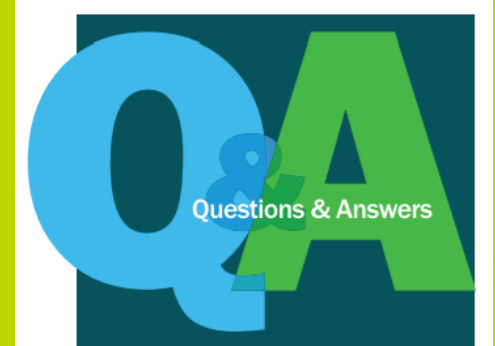
With respect to a prompt and equitable grievance procedure, “OCR has historically looked to whether and how schools have communicated information about their procedures, including where to file complaints, to students, parents/caregivers (for elementary and secondary school students), and employees. In addition, OCR has considered whether the procedures have provided for adequate, reliable, and impartial investigation of complaints; designated and reasonably prompt time frames for the complaint and resolution process; and notice to the parties of the outcome of a complaint.”

(continued on next slide)



July 2021 Title IX guidance

“OCR also has historically explained that a grievance procedure cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. Thus, the procedures should be written in language appropriate to the age of the school’s students, easily understood, and widely disseminated.”
(Q65)



The Latest OCR Voluntary Resolutions

Chino Valley OCR Resolution Agreement: Sexual Harassment

U.S. Department of Education's Office for Civil Rights Announces Resolution of Sexual Harassment Investigation of Chino Valley Unified School District in California

- APRIL 5, 2022
- “The U.S. Department of Education's Office for Civil Rights (OCR) today announced the resolution of a sexual harassment investigation of the Chino Valley Unified School District in San Bernardino County, California.
- OCR determined that the district violated Title IX of the Education Amendments of 1972 and its implementing regulations by failing to provide an effective response to notice of sexual harassment among members of a school athletics team in fall 2017.”

Chino Valley OCR Resolution Agreement: Sexual Harassment (continued)

- “The office found that some team members subjected their fellow teammates to sexual harassment on the team bus, in the locker and weight rooms, and in the Athletics Physical Education classroom that was sufficiently serious so as to limit their ability to access the athletics program. OCR further found that this harassment created a hostile educational environment for team members who reported they were disgusted and shocked by the harassment, avoided the locker room and the team’s social media to avoid such harassment, sought counseling, and feared becoming the targets of harassment and considered leaving the school and team.
- The harassing conduct included videotaped assaults of teammates, students forcibly physically overpowering other students and sharing photos of their genitals among the team and on social media and placing their genitals on and near other students’ faces and bodies. Evidence reflected that the student harassers directed other students not to say anything about what happened to avoid getting in trouble.
- The response from school staff, including coaches, to these incidents was not reasonably calculated to end the harassing conduct or prevent its recurrence. Likewise, the district’s response following investigations reflected an inability to address adequately the conduct and a failure to consider interim supportive measures to protect student athletes from sexual harassment.”

Chino Valley OCR Resolution Agreement: Sexual Harassment (continued)

“The district’s commitments to resolve the investigation include:

- Contacting all former athletes from the school’s fall 2017 team and offering counseling services or reimbursement for such services received to address the effects of the district’s failure to address known sexual harassment on the team.
- Conducting a climate survey for the school’s athletics team.
- Training district and school administrators and interscholastic coaching staff about their responsibilities for responding effectively to sexual harassment.
- Conducting ongoing Title IX education for student athletes in the district’s athletics program to ensure that they know how to recognize and report sexual harassment. And,
- Reporting to OCR about the district’s training and responses to complaints of sexual harassment through the end of the 2022-2023 school year.”

Tamalpais OCR Resolution Agreement: Sexual Harassment

- **U.S. Department of Education’s Office for Civil Rights Announces Resolution of Sex-Based Harassment Investigation of Tamalpais Union High School District**
- JUNE 24, 2022
- “The U.S. Department of Education’s Office for Civil Rights (OCR) today announced the resolution of a sex-based harassment investigation of the Tamalpais Union High School District in California.
- OCR determined that the district violated Title IX of the Education Amendments of 1972 and its implementing regulations by failing to respond promptly and effectively to repeated notice of ongoing sex-based harassment of a transgender student by another student, predicated on sex stereotyping.”
- OCR found that the district failed to investigate known allegations that the other student had repeatedly harassed the student about her appearance, her voice, her body, her name, and her pronouns since the start of the 2017-2018 school year. The ongoing harassment the student experienced over the course of months left her feeling unsafe on campus. OCR also found that the district failed to respond promptly or effectively to notice in spring 2018 that this harassment was continuing, and that the district’s investigation of a 2018 incident involving alleged sex-based harassment of the student was neither adequate nor equitable. As a result of these failures, OCR determined that the district permitted the student to be subjected to a hostile environment based on sex that was sufficiently serious to deny or limit the student’s ability to participate in or benefit from the school’s program.”

Tamalpais OCR Resolution Agreement: Sexual Harassment (continued)

- “OCR found that the district failed to investigate known allegations that the other student had repeatedly harassed the student about her appearance, her voice, her body, her name, and her pronouns since the start of the 2017-2018 school year.
- The ongoing harassment the student experienced over the course of months left her feeling unsafe on campus. OCR also found that the district failed to respond promptly or effectively to notice in spring 2018 that this harassment was continuing, and that the district’s investigation of a 2018 incident involving alleged sex-based harassment of the student was neither adequate nor equitable.
- As a result of these failures, OCR determined that the district permitted the student to be subjected to a hostile environment based on sex that was sufficiently serious to deny or limit the student’s ability to participate in or benefit from the school’s program.”

Tamalpais OCR Resolution Agreement: Sexual Harassment (continued)

- “Today’s resolution with the Tamalpais Union High School District addresses harassment visited on a transgender student based on unlawful sex stereotyping over the course of a school year,” said Catherine E. Lhamon, Assistant Secretary for Civil Rights. “This resolution will not only address discrimination against this one student but also ensure other students will not suffer the recurring harassment she experienced at school.””
- The district’s commitments in the voluntary resolution agreement include:
- Offering to reimburse the student or her parent for past counseling and/or therapy services that the student received after the sex-based harassment began;
- Reviewing and revising, as necessary, its policies and procedures to clarify that harassment based on sex includes harassment based on sex stereotyping;
- Training its employees and contractors who respond to sex-based harassment about the Title IX obligation to respond promptly and equitably;
- Monitoring its schools’ responses to sex-based harassment complaints for compliance with the agreement and Title IX; and
- Providing documentation to OCR demonstrating that the district’s responses to complaints of sex-based harassment during academic years 2020-2021 and 2021-2022 complied with the agreement and Title IX.”

Biden Administrations Proposed Regulations

Ripped from the Headlines: Proposed Title IX Regulations

Sweeping Title IX changes would shield trans students, abuse survivors

The Biden administration's proposal would recognize that transgender students are covered by the law and undo rules devised during the Trump administration

By [Moriah Balingit](#) and [Nick Anderson](#), Washington Post, June 23, 2022

- “On the 50th anniversary of Title IX, the Biden administration proposed sweeping changes to the landmark law that would bar schools, colleges and universities from discriminating against transgender students, as the battle over transgender rights moves to the front lines of the culture war.
- The proposal would also amend the rules that govern how educational institutions investigate and resolve claims of sexual assault and sexual harassment. Over concerns that people were being wrongfully punished, President Donald Trump's education secretary, Betsy DeVos, revised the rules to make them more accommodating to the accused. Critics assailed the changes, saying they would discourage sexual assault survivors from coming forward to report assaults or harassment.”

Proposed Title IX Regulations

The U.S. Department of Education Releases Proposed Changes to Title IX Regulations, Invites Public Comment

Department Commemorates 50 Years of Protecting and Advancing the Rights of All Students.
JUNE 23, 2022

- “The proposed regulations will advance Title IX's goal of ensuring that no person experiences sex discrimination, sex-based harassment, or sexual violence in education. As the Supreme Court wrote in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), it is "impossible to discriminate against a person" on the basis of sexual orientation or gender identity without "discriminating against that individual based on sex." The regulations will require that all students receive appropriate supports in accessing all aspects of education. They will strengthen protections for LGBTQI+ students who face discrimination based on sexual orientation or gender identity. And they will require that school procedures for complaints of sex discrimination, including sexual violence and other sex-based harassment, are fair to all involved. The proposed regulations also reaffirm the Department's core commitment to fundamental fairness for all parties, respect for freedom of speech and academic freedom, respect for complainants' autonomy, and clear legal obligations that enable robust enforcement of Title IX.”

Proposed Title IX Regulations (continued)

- “The proposed regulations would:
- Clearly protect students and employees from all forms of sex discrimination.
- Provide full protection from sex-based harassment.
- Protect the right of parents and guardians to support their elementary and secondary school children.
- Require schools to take prompt and effective action to end any sex discrimination in their education programs or activities – and to prevent its recurrence and remedy its effects.
- Protect students and employees who are pregnant or have pregnancy-related conditions.”

Proposed Title IX Regulations (continued)

- “Require schools to respond promptly to all complaints of sex discrimination with a fair and reliable process that includes trained, unbiased decisionmakers to evaluate the evidence.
- Require schools to provide supportive measures to students and employees affected by conduct that may constitute sex discrimination, including students who have brought complaints or been accused of sex-based harassment.
- Protect LGBTQI+ students from discrimination based on sexual orientation, gender identity, and sex characteristics.
- Clarify and confirm protection from retaliation for students, employees, and others who exercise their Title IX rights.”

Proposed Title IX Regulations (continued)

- “Improve the adaptability of the regulations' grievance procedure requirements so that all recipients can implement Title IX's promise of nondiscrimination fully and fairly in their educational environments.
- Ensure that schools share their nondiscrimination policies with all students, employees, and other participants in their education programs or activities.
- The Department will engage in a separate rulemaking to address Title IX's application to athletics.”

Comments on Proposed Biden Administration Regulations

Proposed Federal Rules on Title IX Draw Flood of Public Comments

Protection for LGBTQ students a major focus in the rulemaking process

By Libby Stanford, Education Week, September 23, 2022

“The U.S. Department of Education received hundreds of thousands of comments related to its proposed overhaul of Title IX sex discrimination rules, exposing the divisive nature of the effort to explicitly protect LGBTQ students from bias among other contentious issues.

The Education Department released its proposed changes to Title IX regulations in June, making headlines for the decision to broaden the definition of sex-based harassment and discrimination to include gender identity and sexual orientation. The proposed rules had received 235,816 comments by its deadline on Sept. 12, according to regulations.gov, the website that allows members of the public to comment on policy. The proposed rule also provided new protections to pregnant and parenting students, broadened strict definitions of sexual harassment implemented by former U.S. Secretary of Education Betsy DeVos, and overturned Trump-era policies for the process of responding to sexual harassment, assault, and sex discrimination.”

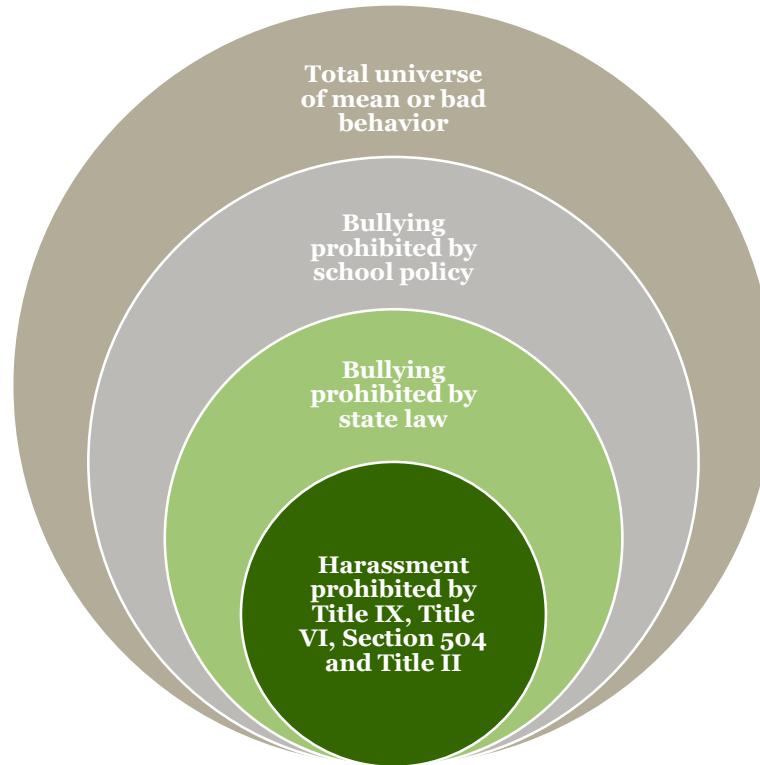
Connecticut Bullying/Harassment Laws

TRUE/FALSE POLL



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

The universe of bullying & harassment



Connecticut Law: Nondiscrimination in Public Schools

- “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 Definition

- Act that is direct or indirect and severe, persistent, or pervasive, which:
 - Causes physical or emotional harm to an individual;
 - Places an individual in reasonable fear of physical or emotional harm; or
 - Infringes on the rights or opportunities of an individual at school.
- “‘Bullying’ shall include, but need 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).
- A single act may be sufficient in some circumstances to constitute bullying.

Hypothetical

Cate, a high school student, sent topless photos of herself to her boyfriend, Rick, via Snapchat throughout their 3-month relationship, expecting the photos would 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?
 - “Cyberbullying” means “any 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” (Conn. Gen. Stat. § 10-222d)
- Was the school's (i.e., the guidance counselor's) response appropriate?
- What, if anything, could or should the school have done differently?

Reconciling Title IX with State and Local Law

Takeaways:

- 2020 Title IX requirements apply only to alleged sexual harassment as defined in regulations. Connecticut requirements apply to a broader range of conduct.
- ED has indicated that if 2020 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

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

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/>

Agenda

- ❑ Title IX Overview
- ❑ Title IX: Laws and Regulations
- ❑ Title IX and LGBTQ+ Students
- ❑ 2020 Title IX Sexual Harassment Regulations and Guidance
- ❑ Recent OCR Voluntary Resolutions
- ❑ Biden Administration's Proposed Title IX Regulations
- ❑ Connecticut Bullying/Harassment Laws
- ❑ Q&A

Questions?



YES/NO POLL

Did you learn at least three new things
as a result of this session?

**Understanding
the Audience**

A photograph of a classroom setting. In the background, a large green chalkboard is visible. Below the chalkboard, a white shelf holds two orange rectangular objects, possibly erasers or chalk holders. In the foreground, several wooden desks and metal chairs are arranged in rows, slightly out of focus.

Maree Sneed

mareesneed@comcast.net