

New Title IX Regs



And how they will impact campuses

May 9, 2024
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Definitions Expanded: Sex Discrimination

2020:

Address all **sexual harassment** through the grievance process--that is:

1. *Quid pro quo*: An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. *Hostile environment*: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
3. *Sexual violence*: sexual assault, dating violence, domestic violence, stalking

2024:

Now must address **all sex discrimination** under Title IX process, which includes different treatment, disparate impact, and retaliation, in addition to sex-based harassment.

- different treatment
- disparate impact
- retaliation
- sex-based harassment

Impact to campus This includes gender identity except as applied to sex-separate living facilities and athletic teams. The Dept of Ed will be issuing separate regulations on Title XI and sex-separate athletic teams at a future date.

Definition Expanded: Hostile Environment

2020:

1. *Quid pro quo*: An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. *Hostile environment*: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
3. *Sexual violence*: sexual assault, dating violence, domestic violence, stalking

2024:

Hostile environment: Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive

and is so severe or pervasive

that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity.

Impact to campus: 10% more complaints than in the past. *

New Words: Sex-based harassment

2020:

Sexual Harassment

2024:

Sex-based harassment

Instead of being “sexual,” the prohibition is against harassment or discrimination on the basis of sex stereotypes, sex characteristics, pregnancy and related conditions, sexual orientation, and gender identity.

There are limited circumstances where Title IX permits separation or different treatment on the basis of sex, but such different treatment or separation is generally permissible only if it does not subject a person to more than de minimis harm. The regulation explains that preventing a person from participating in an education program or activity *consistent with their gender identity* causes more than de minimis harm. This rule does mean that Title IX requires individuals to be permitted to use bathrooms and locker rooms that align with their gender identity. Does not address gender identity and sex-separate athletic teams, which will be covered in a separate rule, or sex-separate housing.

Impact to campus: More complaints fall under Title IX purview and require a call to the Title IX Coordinator.

New Words: De Minimis Harm

2020:

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive **that it effectively denies a person equal access to the recipient's education program or activity;** or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

2024:

Must not separate or treat any person differently based on sex in a manner that subjects them to more than **de minimis harm**, except in the limited specific circumstances permitted by Title IX. Recognizes that policies and practices that prevent a person from participating in a recipient's education program or activity consistent with their gender identity subjects a person to more than de minimis harm.

Impact to campus: Must consider gender identity and de minimis harm in applicable Title IX reports.

Location, location, location

2020:

In order for the District to be obligated to respond under Title IX, the prohibited conduct had to occur during a program or activity where the school had substantial control, and inside the United States.

2024:

Title IX covers **all conduct alleged to be contributing to a hostile environment**, even if it occurred outside the district's education program or activities, or outside the United States. The focus now is on whether the conduct is subject to the school's disciplinary authority. **If the school would impose discipline for similar, non-sex-based, off-campus behavior, then it must do so here.**

Impact to campus: Overseas field trips are now included, and could be things that occur outside our education program or activity (e.g. at home) **IF** they are alleged to be contributing to a hostile environment. **For off-campus conduct, Title IX jurisdiction applies when the school may discipline students under the SCOC, bullying policies, & extracurricular codes of conduct.**

Supportive Measures

2020:

No-contact orders had to be mutual

Schedule change had to have comparable alternative

2024:

No-contact orders can be unilateral

Changes in class and extracurriculars can occur regardless of whether there is a comparable alternative.

A party can challenge a decision to provide, deny, modify, or terminate a supportive measure.

Title IX Coordinator must consult with a member of the IEP or 504 Team if either party is a student with a disability.

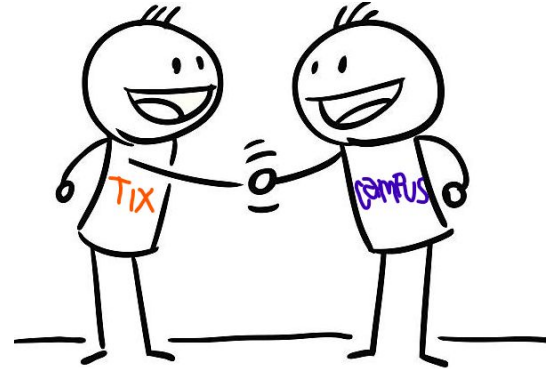
Impact to campus: Member of IEP or 504 team will be contacted by Title IX Coordinator if the student received SpEd or 504 services.

Single Investigator Model

2020:



2024:



Impact to campus: Fewer people involved in every formal investigation.

Reporting Requirements

2020:

Directly related evidence had to be shared with parties. 10 days to respond.

Final Investigative Report had to be shared with parties. 10 days to respond

Decision Maker's ruling.

2024:

An accurate description or summary of relevant evidence must be shared with the parties (with an option to request access to the relevant evidence). Opportunities to respond, no timeframe specified.

A documented process must require the decision maker to assess a party's credibility when a party's or witness's credibility is in question.

Written determination only requires conclusion of whether sex discrimination occurred and the rationale. Appeals process can follow same process used in comparable proceedings.

Impact to campus: Reporting & investigations look much more like our current FFH documentation, with the addition of an opportunity to see evidence summary, access to relevant evidence, and opportunity to respond.

Timelines

2020:

- notice before interviews
- 10 day window to review evidence and respond with questions
- 10 day window to review final and respond to final investigative report that goes to decision maker

2024:

- “Reasonably prompt” is a strengthened demand in new regulations.
- “Reasonable opportunities” to access the evidence and respond.

Impact to campus: A formal investigation should be closer to the 10-day discrimination & bullying process (FFH & FFI) process than a months-long proposition.

Informal Resolution

2020:

Only available if formal complaint was filed.

2024:

Available even if no formal complaint is filed.

We must provide notice of availability.

(Not an option if allegations are against an employee.)

Impact to campus: Would need a trained facilitator.

Retaliation

2020:

Part of code of conduct and notice under 2020 regs

§ 106.71 Retaliation.

- (a) **Retaliation prohibited.** No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes **retaliation**. The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging **retaliation** may be filed according to the grievance procedures for sex discrimination required to be adopted under § 106.8(c).

2024:

It is the district's duty to prevent and respond to retaliation against any individual--student, employee, or otherwise--who exercise their rights under Title IX. Retaliation is defined at length in the rules and includes not only retaliation by the district but also **peer retaliation**.

Impact to campus: Will need to report retaliation related to Title IX to the Title IX coordinator, whereas before it was a SCoC violation handled outside Title IX.

Dismissal

2020:

The district may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

1. a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
2. the respondent is no longer enrolled or employed by the district; or
3. specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

2024:

None mandatory; all dismissals are “permissive” and must

- Offer an appeal
- Offer supportive measures, as appropriate
- Take other steps to ensure that sex discrimination does not continue or recur.

Appeal Process

2020:

Defined under Title IX policy FFH(Legal)

A district must offer both parties an appeal from a determination regarding responsibility, and from a district's dismissal of a formal complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

A district may offer an appeal equally to both parties on additional bases.

As to all appeals, the district must:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
3. Ensure that the decision-maker(s) for the appeal complies with the standards in the Title IX regulations regarding conflict of interest and bias [see Process for Title IX Formal Complaint, item 3, above];
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
5. Issue a written decision describing the result of the appeal and the rationale for the result; and
6. Provide the written decision simultaneously to both parties.

34 C.F.R. 106.45(b)(8)

2024:

Can use FNG process (will need to amend policy)

Impact to campus: Could change the process and open to more FNG appeals.

Pregnancy

2020:

Did not specifically include pregnancy and pregnancy-related conditions

2024:

Includes pregnancy and pregnancy-related conditions (termination of pregnancy, lactation, recovery from, and related medical conditions).

Must take into account the preferences of the student/employee.

Impact to campus: Anticipating the change, we implemented this in 2023-2024. When a teacher has knowledge that a student is pregnant, they must notify the student of Title IX protections that are in place and name of coordinator, and also report to Title IX Coordinator. Must provide reasonable accommodations.

Training Requirements

2020:

Investigator/Decision Maker training once

2024:

Investigator/Decision Maker training ANNUALLY

Confidential Employees

2020:

Everyone was a mandated reporter.

2024:

District can define in policy who is a confidential employee.

Confidential employees must explain three things to the person who is describing conduct that could reasonably be deemed sex discrimination:

- Confidential status
- How to contact Title IX Coordinator and make a complaint
- Possibility of supportive measures and informal resolution.

Impact to campus: All confidential employees will need to be trained annually.

Dress Code

2020:

Not addressed

2024:

Not in final regs; however, DoE affirmatively states in commentary that “sex-specific appearance codes, include sex-specific dress and grooming codes, are subject to Title IX and 106.31(a)(2) of the final regulations.”

Differing treatment based on student dress can constitute sex discrimination if it results in an adverse impact on the students. *Arnold v Barbers Hill ISD* (2020)

Impact to campus: If it's not related to safety, probably don't enforce appearance-based codes different for boys and girls.

Publishing non-discrimination policies

2020:

Employees, students, guardians

2024:

Must publish nondiscrimination policies and grievance procedures to vendors, etc.

Impact to campus: Handbooks, manuals, publications, applications, etc. need non-discrimination statement included.



2020:

2024:

Parent's legal rights>Title IX compliance>State Law or FERPA

106.6 clarifies that a recipient must comply with Title IX and final regs in event of conflict with State law or FERPA. Title IX and regs do not override any legal right of a parent, guardian, or other authorized legal representative to act on behalf of complainant, respondent, or other person.

Impact to campus: Work very closely with Legal office and TIX coordinator.

Next Steps

Summer	Update Board Policies
July	Session for staff at Engage
July	(Newly required) ANNUAL Investigator and Decision Maker training for all administrators
July-August	Updated training for all staff
August	Updated training for contracted labor
Fall 2024	New Admin Academy Modules

For More Information





Code of Federal Regulations

A point in time eCFR system



[Title 34](#)

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ENHANCED CONTENT

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© **PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

SUPREME COURT OF THE UNITED STATES

Syllabus

BOSTOCK v. CLAYTON COUNTY, GEORGIA

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT



U.S. Department of Education

Student Loans

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Laws

Sex Discrimination: Overview of the Law

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination based on sex in education programs and activities that receive federal financial assistance. Title IX states "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[.]" All federal agencies that provide grants of financial assistance are required to enforce Title IX's nondiscrimination mandate. The U.S. Department of Education (Department) gives grants of financial assistance to schools and colleges and to certain other entities, including vocational rehabilitation programs and libraries.

Examples of the types of discrimination that are covered under Title IX include but are not limited to: sex-based harassment; sexual violence; pregnancy discrimination; the failure to provide equal athletic opportunity; sex-based discrimination in a school's science, technology, engineering, and math (STEM) courses and programs; discriminatory application of dress code policies and/or enforcement; and retaliation.

2024 AMENDMENTS TO TITLE IX REGULATIONS

In April 2024, the Department issued a Final Rule amending the Department's regulations implementing Title IX. The April 2024 final regulations promote educational equity and opportunity for students across the country by strengthening and clarifying protections that address all forms of sex discrimination, including sex-based harassment and sexual violence. The April 2024 final regulations advance Title IX's promise of ensuring that no person experiences sex discrimination, as well as accountability and fairness, while empowering and supporting students and families. The final regulations restore and strengthen vital protections for students, and provide schools with information to meet their Title IX obligations while offering appropriate discretion and flexibility to account for variations in school size, student populations, and administrative structures. The final regulations also promote accountability by requiring schools to take prompt and effective action when notified of conduct that reasonably may constitute sex discrimination in their education programs or activities. The final regulations also reaffirm the Department's core commitment to fundamental fairness for all parties, the rights of parents and guardians to support their minor children, and respect for complainants' autonomy.

The April 2024 Title IX regulation, which is codified in the Code of Federal Regulations at 34 CFR Part 106, is enforced by the Department's Office for Civil Rights (OCR) and is effective on August 1, 2024.

Additional information about the April 2024 Final Regulations:

- The Federal Register official publication of the Final Rule (April 29, 2024) [PDF](#) (4.0M)
- Unofficial version of the Department's 2024 Title IX Final Rule [PDF](#) (4.4M)
- Read the Press Release
- Fact Sheet [PDF](#) (197K)
- Summary of Major Provisions of the Department's 2024 Title IX Final Rule [PDF](#) (327K)
- Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures [PDF](#) (322K)