

St.Mary's County Public Schools Title IX Guide

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Introduction

Title IX prohibits sex discrimination in educational institutions that receive federal funding. The preamble to Title IX states that:

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.

While Title IX is a very short statute, Supreme Court decisions and guidance for the U.S. Department of Education have given it a broad scope covering sexual harassment and sexual violence. To understand the specific requirements of Title IX, schools must look to guidance materials from the U.S. Department of Education in the form of “Dear Colleague Letters” (DCL). DCL’s are not law; instead they inform schools how the Department of Education will review and enforce Title IX complaints.

Essentially, Title IX protects students, employees, applicants for admissions and employment, and other persons from all forms of sex discrimination. School districts must maintain an environment for students and employees that is free from unlawful sex discrimination on all aspects of the educational and/or employment experience, including academics, extracurricular activities, and athletics.

Areas Addressed by Title IX

1. Admissions and Academic Counseling

Many fields of study continue to be affected by sex-based enrollment disparities in nontraditional fields. Fields of study in science, technology, engineering, and mathematics or career and technical education may be affected by disproportionate enrollment of students based on sex. Reviewing course enrollment data is suggested to ensure that disparities are not the result of discriminatory practices.

2. Athletics

Under Title IX, a school district must provide equal athletic opportunities for members of both sexes and effectively accommodate students’ athletic interests and abilities. The Office of Civil Rights (OCR) uses a three-part test to determine whether an institution is providing nondiscriminatory athletic participation opportunities in compliance with the Title IX regulation. The test provides the following three compliance options:

- a. Whether participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

- b. Where the members of one sex have been and are underrepresented among athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or
- c. Where the members of one sex are underrepresented among athletes, and the district cannot show a history and continuing practice of program expansion, as described above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

The three-part test furnishes a school district with three individual avenues to choose from when determining how it will provide individuals of each sex with nondiscriminatory opportunities to participate in athletics. If any part of the three-part test is met, OCR will determine that the school district is meeting this requirement.

Additionally, Title IX regulations and OCR guidance require that recipients that operate or sponsor interscholastic, club or intramural athletics provide equal athletic opportunities for members of both sexes. In determining whether a school district is providing equal opportunity in interscholastic activities, clubs, or intramural athletics, the regulations require a school district to consider, the following factors:

- a) provision of equipment and supplies;
- b) scheduling of games and practice time;
- c) travel and per diem allowances;
- d) opportunity for coaching and academic tutoring;
- e) assignment and compensation of coaches and tutors;
- f) provision of locker rooms, and practice, and competitive facilities;
- g) provision of medical and training facilities and services;
- h) publicity;
- i) recruitment; and
- j) support services.

3. Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment and refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, sexual coercion, stalking, and gender based harassment. Gender-based harassment refers to unwelcome

conduct based on an individual's sex, including harassment based on nonconformity with sex stereotypes, and not necessarily involving conduct of a sexual nature. All of these types of sex-based harassment are forms of sex discrimination prohibited by Title IX.

Title IX prohibits sex-based harassment by peers, employees, or third parties that is sufficiently serious to deny or limit a student's ability to participate in or benefit from district education programs and activities (*i.e.*, creates a hostile environment). When a school knows or reasonably should know of possible sex-based harassment, it must take immediate and appropriate steps to investigate what occurred. If an investigation reveals that the harassment created a hostile environment, the school must take prompt steps to end the harassment, eliminate a hostile environment, prevent the harassment from recurring, and, as appropriate, remedy its effects on the complainant.

Hostile Environment

A hostile environment is created when unwelcome conduct of a sexual nature is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from the education program. In determining whether a hostile environment was created, schools should consider the following factors:

- The degree to which the conduct affected one or more students' education
- The type, frequency, and duration of the conduct
- The identity of and relationship between the alleged harasser and the subject(s) of the harassment
- The number of individuals involved
- The age and sex of the alleged harasser and the subject(s).
- The size of the school, location of the incidents, and context in which they occurred

Sexual Orientation

Title IX prohibits discrimination and harassment on the basis of sexual orientation and gender expression. When a school knows or reasonably should know of possible sexual harassment, it must take prompt and appropriate steps to investigate or otherwise determine what occurred. This is a school's responsibility regardless of whether a student has complained, asked the school to take action, or identified conduct as a form of sexual harassment. Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own sexual harassment investigation and take interim measures to protect staff or students during the investigation of a complaint.

A school can receive notice of sexual harassment in many different ways. In some situations, sexual harassment may be in plain sight, a student may have reported behavior to a teacher or

other employee, or an employee may have witnessed the harassment. The school may also receive notice about sexual harassment in an indirect manner, from sources such as a community member, social networking sites, or the media. In other cases, the pervasiveness of sexual harassment may be widespread, openly practiced, or well-known among students or employees.

If sexual harassment or sexual violence occurred off campus, the school should still investigate to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on the student at school. If the sexual harassment took place in the context of an education program or activity of the school, the school must investigate the complaint as it would for on-campus behavior. Additionally, the school must consider the effects of off-campus misconduct when evaluating whether there is a hostile environment on campus.

School staff should resolve sexual harassment complaints based on what they think is more likely than not to have happened (i.e., a preponderance of the evidence). When addressing sexual harassment, school and district administrators should look beyond simply disciplining the perpetrator(s). Eliminating a hostile environment created by harassment may include separating the harasser and the targeted student, providing counseling for students, taking disciplinary action against the harasser, ensuring that students and families know how to report subsequent problems, and following up with students to ensure that the harassment has stopped. Depending on the extent of the hostile environment, the school may also need to provide training or other interventions for the larger school community, to ensure that all students, their families, and school staff recognize sexual harassment and know how to respond. Schools should monitor incidents to help identify students or employees who have multiple complaints filed against them or who have been repeated targets, and address any patterns or systemic problems that arise, including making the District Title IX Coordinator and district officials aware of these patterns or systemic problems as appropriate.

For more information about a district's obligation to address sexual and gender-based harassment, please review:

- U.S. Dep't of Educ., Office for Civil Rights, *Title IX Regulations Addressing Sexual Harassment (Unofficial Copy)*, (May 6, 2020).;
- Questions and Answers on Title IX and Sexual Violence (April 29, 2014), *available at* <http://www.ed.gov/ocr/docs/qa-201404-title-ix.pdf>;
- Dear Colleague Letter: Sexual Violence (April 4, 2011), *available at* <http://www.ed.gov/ocr/letters/colleague-201104.pdf>;
- Dear Colleague Letter: Harassment and Bullying (October 26, 2010), *available at* <http://www.ed.gov/ocr/letters/colleague-201010.pdf>

4. Pregnant and Parenting Students

Under the Title IX regulations, districts are prohibited from: discriminating against or excluding any student from its education program or activity, including any class or extracurricular activity on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

For more information about a recipient's obligations regarding pregnant and parenting students, please review:

- 34 C.F.R. §§ 106.21(c), 106.31, 106.40;
- Supporting the Academic Success of Pregnant and Parenting Students (June 2013), *available at* <http://www.ed.gov/ocr/docs/pregnancy.pdf>;
- Dear Colleague Letter: Pregnant and Parenting Students (June 25, 2013), *available at* <http://www2.ed.gov/ocr/letters/colleague-201306-title-ix.pdf>; and
- Dear Colleague Letter: Nondiscriminatory Treatment of Pregnant Student Athletes (June 25, 2007), *available at* <http://www.ed.gov/ocr/letters/colleague-20070625.pdf>.

5. Discipline

Title IX regulations prohibit a district from subjecting any person to separate or different rules of behavior, sanctions, dress code or other treatment, such as discriminatory discipline, based on sex. For example, similarly situated students should not be disciplined differently based on sex, gender identity or for failing to conform to stereotypical notions of masculinity or femininity in their behavior or appearance for the same offense.

For more information about a recipient's obligations regarding nondiscriminatory administration of discipline, please review:

- 34 C.F.R. § 106.31(b)(4); and
- Dear Colleague Letter: Nondiscriminatory Administration of Discipline (January 8, 2014), *available at* <http://www.ed.gov/ocr/letters/colleague-201401-title-vi.pdf>.

6. Single-Sex Education

A school is generally prohibited from providing any of its education programs or activities separately on the basis of sex, or requiring or refusing participation by students on the basis of sex unless expressly authorized to do so under Title IX regulations. Title IX regulations do not prohibit recipients from grouping students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex or using requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex. The Department's Title IX regulations identify the following categories for which a recipient may intentionally separate students by sex:

- (a) contact sports in physical education classes;
- (b) classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality; and
- (c) non-vocational classes and extracurricular activities within a coeducational, non-vocational elementary or secondary school if certain criteria are met.

With respect to the third category, a recipient may offer a single-sex non-vocational class or extracurricular activity in a coeducational, non-vocational elementary or secondary school if the class is based on one of two important objectives: to improve its students' educational achievement through its overall established policy to provide diverse educational opportunities or to meet the particular, identified educational needs of its students. The single-sex nature of each class must be substantially related to achievement of the important objective and the recipient must implement its important objective in an even handed manner. In addition, enrollment in a single-sex class must be completely voluntary and the recipient must provide a substantially equal coeducational class in the same subject to all students, and may be required to provide a substantially equal single-sex class for students of the excluded sex. If a district provides a single-sex class under this regulatory exception, it is also required to conduct a periodic evaluation of the class and the original justification behind the class at least every two years. The periodic evaluation must ensure that each single-sex class is based upon a genuine justification and does not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex, and that each single-sex class or extracurricular activity is substantially related to the achievement of the important objective for the class.

If the district offers a single-sex class, then the Title IX coordinator should be involved in assessing the recipient's compliance with Title IX, both when determining whether and how single-sex classes can be offered and during the recipient's periodic review of single-sex offerings. The Title IX coordinator may assist with helping to ensure that the recipient offers a substantially equal coeducational class and, as appropriate, substantially equal single-sex class, for each single-sex class offered. The Title IX coordinator should also help ensure that transgender students are treated consistent with their gender identity in the context of single-sex classes.

For more information about single-sex schools, classes, and extracurricular activities, please review:

- 34 C.F.R. § 106.34;
- Questions and Answers Regarding Single-Sex Elementary and Secondary Classes and Extracurricular Activities (December, 2014), *available at* <http://www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf>;
- Dear Colleague Letter: Single-Sex Education (January 31, 2007), *available at* <http://www.ed.gov/ocr/letters/single-sex-20070131.html>; and

- Final Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 71 Fed. Reg. 62,530 (October 25, 2006), *available at* <http://www2.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>.

7. Retaliation

A school cannot retaliate against an individual, including a Title IX Coordinator, for the purpose of interfering with any right or privilege secured by Title IX. Retaliation against an individual because the individual filed a complaint alleging a violation of Title IX; participated in a Title IX investigation, hearing, or proceeding; or advocated for others' Title IX rights is also prohibited. The district should ensure that individuals are not intimidated, threatened, coerced, or discriminated against for engaging in such activity.

For more information about the prohibition against retaliation, please review:

- 34 C.F.R. § 106.71 (incorporating by reference 34 C.F.R. § 100.7(e)); and
- Dear Colleague Letter: Retaliation (April 2013), *available at* <http://www.ed.gov/ocr/letters/colleague-201304.pdf>.

Conducting a Title IX Investigation

It is the policy of St. Mary's County Public Schools to provide for the adequate, equitable, reliable and impartial investigation of all Title IX complaints. Instances where complainants who wish to resolve their concerns informally through counseling, advice, or information discussion, should bring their concerns to the attention of the Title IX Coordinator or building designee. The Title IX Coordinator or designee will interview the complainant and others, as appropriate, who may have knowledge of the facts underlying the concern. Title IX Coordinators, investigators, and decision makers, must not have a conflict of interest or bias when conducting a Title IX investigation. At any point, the complainant may elect to end the informal process in favor of filing a formal grievance. Although informal resolution of complaints are a viable option, mediation between the complainant and perpetrator of the offense is prohibited when resolving complaints of sexual harassment.

Students

When a student alleges to a staff member that there has been an incidence of bullying or harassment the staff member must report the complaint to the school administrator. The school administrator will furnish the student with the *Bullying, Harassment, or Intimidation Reporting Form* and ask the student to submit the complaint. A student may report an alleged incident of sexual discrimination, including sexual harassment, to a school staff member in person, by phone, via email, or in writing. If the complaint is regarding sexual discrimination, including

sexual harassment, the administrator will inform the School Title IX Coordinator and send a copy of the complaint to the District Title IX Coordinator. The District Title IX Coordinator for student complaints is the Supervisor of School Counseling.

Upon receipt of the written/verbal complaint, the Title IX Investigator will investigate the allegation, schedule meetings to interview the complainant, possible witnesses, and the respondent. Supportive measures will be offered, as appropriate, before and/or after the filing of a formal complaint. The Title IX Investigator will provide sufficient written notice to all known parties to give time to prepare a response before an initial interview. The written notification will include:

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

The Title IX Investigator will provide written notification of the investigative findings to the Complainant, Respondent, and Title IX Decision Maker. If the investigation yields additional allegations that were not included in the original written notice, notice of the additional allegations must also be provided in writing to the known parties. Parties will be provided written preliminary investigative findings and afforded 10 days for their review and written response. A written final investigative report that summarizes the relevant evidence will be provided to both parties and their advisors, if any, for their review and written response at least 10 days before a determination of responsibility. During this time and prior to the determination of responsibility each party will be provided the opportunity to submit to the Title IX Decision Maker written relevant questions for limited follow-up. The Title IX Decision Maker may determine what evidence is relevant and will inform parties of evidence considered to be impermissible. Documentation of the findings will be provided to and maintained by the School Title IX Coordinator. In accordance with a reasonably prompt timeframe established by the Title IX Decision Maker, any supplemental information will be reviewed. The Title IX Decision Maker will then render in writing a determination of responsibility using a preponderance of evidence standard of proof. If a violation is found to have occurred, the appropriate student disciplinary and /or remedial action will be taken in accordance with the Code of Student

Conduct. Additionally, the Title IX School Coordinator will provide and implement supportive measures and/or remedies for the complainant or others whose access to the educational program or activity has been limited or denied and will take steps to ensure that sex discrimination does not occur in the future.

Supportive Measures:

St. Mary's County Public Schools offer supportive measures to students who report incidents wherein they have been the recipient of sexual harassment while participating in a school system educational program or school sponsored activity. Supportive measures are a non-disciplinary, individualized service offered to restore or preserve equal access to the schools education program or activity without unreasonably burdening another party. The below list of support measures are not inclusive of all measures.

- Class change
- Schedule modification
- School route change
- Bus change
- Counseling services through the school counselor
- Campus escort to and from a specific class
- Mutual restrictions on contact between parties
- Leave of absences
- Increased security
- Monitoring of certain areas

Range of Disciplinary Measures

Those students found responsible for sexual harassment at the conclusion of the investigative and grievance process may incur disciplinary measures in accordance with the St. Mary's County Public School Student Code of Conduct. The below list of disciplinary measures are not inclusive of all measures.

- Loss of school privileges
- Behavior intervention contract
- Conference with Counselor
- Change in schedule and/or bus transportation
- Restitution
- Conference with Safety Resource Officer (SRO)
- Verbal Correction
- Warning
- Removal from extracurricular activities
- Detention
- Referral to Pupil Services Team (PST)
- IEP review (for students with an IEP)

- Bus Suspension
- In-School Intervention (ISI)
- Behavior Intervention Plan (BIP) /Functional Behavioral Assessment (FBA)
- Short-term suspension, 1-3 days
- Alternative Placement
- Extended suspension or expulsion (if disciplinary conference in Student Services)
- Police contacted, possible student arrest (where applicable)

Complainants:

Have the right to:

- a. Have an adult advisor of their choice present with them (friend, parent, school employee, counselor, coach, etc.).
- b. Be provided with information on the grievance process and their rights (Title IX brochure).
- c. Supportive measures to ensure and/or restore access to the educational program.
- d. Identify relevant parties/witnesses for the investigator to interview.

Can expect:

- a. Their complaint will be taken seriously and investigated promptly according to the SMCPS Title IX grievance procedures.
- b. Every effort will be made to handle the complaint discreetly and with as much confidentiality as possible.
- c. Their name to be provided to the respondent when the respondent receives the complaint.
- d. The investigation will begin immediately and be completed in a timely manner.
- e. To be informed as to the progress of the investigation.
- f. To be informed of the investigation results.
- g. To be informed of the option to participate in an informal resolution process.
- h. All persons included in the complaint and investigation to be warned that retaliatory conduct is prohibited.

Respondents:

Have the right to:

- a. Have an adult advisor of their choice present with them (friend, parent, school employee, counselor, coach, etc.).
- b. Be provided with information on the grievance process and their rights (Title IX brochure).

- c. Supportive measures to ensure and/or restore access to the educational program.
- d. To be informed of the option to participate in an informal resolution process.
- e. Be given the name of the person making the complaint.
- f. Be given the specifics of the allegation(s).
- g. Identify relevant parties/witnesses for the investigator to interview.

Can expect:

- a. The investigation will begin immediately and be completed in a timely manner.
- b. To be presumed as not responsible for the alleged conduct until a determination has been made at the conclusion of the investigative process.
- c. To be informed about the progress and the result of the investigation.
- d. All persons included in the complaint and investigation to be warned that retaliatory conduct is prohibited.
- e. If warranted, remedial steps to be taken including disciplinary action in accordance with the Student Code of Conduct.

Title IX Grievance Procedures

Grievance procedures ensure that the students, parents, and staff members of the school district are aware of their rights under Title IX, have contact information for the Title IX Coordinator, and know how to file a complaint alleging a violation of Title IX. It is the policy of the St. Mary's County Public Schools (SMCPS) not to discriminate on the basis of sex. SMCPS has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any discrimination and sexual harassment prohibited under Title IX of the Education Amendments of 1972.

Any person who believes he or she has been subjected to discrimination and harassment on the basis of sex may file a grievance under this procedure. This grievance procedure applies to complaints alleging sex - based discrimination carried out by students, employees, or third parties. This grievance procedure is meant to provide a prompt and equitable resolution of a complaint. It is against the law for SMCPS to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.

An appeal of the Title IX Decision Maker's Determination of Responsibility must be filed in writing within 30 calendar days of the date of Determination of Responsibility, and at minimum contain (1) the nature of the grievance; (2) the facts upon which the grievance is based, including a list of all witnesses; (3) the remedy requested; and (4) the grievant's signature and (5) the date the grievance is filed. The written grievance must be filed with the District Title IX Coordinator in the SMCPS' Department of Student Services at the following address:

District Title IX Coordinator
St. Mary's County Public Schools
23160 Moakley Street
Suite 104
Leonardtown, MD 20650

The District Title IX Coordinator will reconsider the determination on the following basis:

1. Procedural irregularity that affected the outcome of the matter;
2. Newly discovered evidence that could affect the outcome of the matter; and/or
3. Title IX personnel had a conflict of interest or bias that affected the outcome of the matter;
4. The disciplinary sanction is inappropriate or unreasonable;
5. Or any other basis provided by law or Board policy governing appeals.

The District Title IX Coordinator or designee will provide a written report of the investigation within thirty (30) school days of receipt of the grievance. The report should include the following information:

- A statement of the complainant's allegations and the remedy sought;
- A statement of the facts as contended by each party;
- A list of the witnesses interviewed and/or the documents reviewed during the investigation;
- A statement of the facts as determined by the District Title IX Coordinator or designee with reference to the evidence to support each fact;
- The District Title IX Coordinators conclusion as to whether the allegations are valid;
- Any corrective action recommended and/or determined;
- An assurance and description of the steps to be taken, if necessary, to prevent the recurrence of the prohibited actions and to correct any discriminatory effects on the complainant and others, if appropriate.

An extension of the thirty (30) school day deadline for the submission of the written report of the investigation may apply if necessary as determined by the Hearing Examiner. The parties will be notified in writing of the extended time frame.

The parties shall have an opportunity to appeal the decision of the Title District IX Coordinator or designee in writing to an impartial third-party hearing examiner within ten (10) school days

of the date of the written report of findings. The appeal should be submitted in writing to the Title IX Coordinator. The parties including the parent or guardian or other representative, will have an opportunity to participate in the appeal. Following an appeal, the hearing examiner will review the appeal along with the written report of findings and then respond in writing within thirty (30) school days of receiving the appeal. The hearing examiner shall either affirm or reverse the decision of the District Title IX Coordinator or designee.

An extension of the thirty (30) school day deadline for the submission of the decision on appeal may apply if necessary as determined by the District Title IX Coordinator or designee. The parties will be notified in writing of the extended time limit.

The Complainant has the right to file a complaint at any time with the U.S. Department of Education Office for Civil Rights (OCR) without going through the SMCPS internal grievance procedures.

REFERENCES

U.S. Department of Education, Office for Civil Rights, *Title IX Resource Guide* (Apr. 2015).

U.S. Dep't of Educ., OCR, Title IX Regulations Addressing Sexual Harassment (Unofficial Copy), (May 6, 2020), ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf.

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