



Connecticut Association of Boards of Education

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PRESENTS POLICY HIGHLIGHTS

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Important Updates to Title IX Regulations

After breaking through a year's worth of self-imposed deadlines and extending opportunities for public comment, the U.S. Department of Education issued the 2024 Title IX Final Rule on sex-based harassment and discrimination. Districts will be required to implement the Final Rule's regulations on August 1, 2024, leaving public schools and other covered entities just over 100 days to comply with these new changes.

Among other significant changes, new opportunities for discretion and flexibility, and added definitions, the Final Rule redefines sex-based harassment and broadens the scope of sex discrimination to include sex stereotyping, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity

According to Sonja H. Trainor, Managing Director for Legal Advocacy at the National School Boards Association (NSBA), key provisions of the new regulations include the following shifts from the 2020 Final Rule. (For the purposes of this review, "District" is used interchangeably with "Recipient," as "recipient" refers to districts receiving federal funding):

- The regulations broaden the definition of discrimination based on sex to include not only discrimination based on sex stereotypes, sex characteristics, and pregnancy or related conditions but also *sexual orientation and gender identity*;
- The term "sex-based harassment" also has been defined more broadly to include harassment based on sexual orientation and gender identity. Sex-based harassment creates a "hostile environment" in more situations, as well. A hostile environment exists when "unwelcome sex-based conduct 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 District's educational program or activity."
- Although more conduct may constitute sex-based discrimination or harassment, the Final Rule permits *more flexibility and informality* in the procedures schools must use to address it "to account for *variations in school size, student populations, and administrative structures*." (Note: NSBA's public comments had asked the Department to provide some flexibility for school districts, including allowing an *informal resolution process option* for some Title IX complaints, so that building personnel could address harassment situations consistent with the *age of the student and the nature of the allegation*.)

- Under the new rules:
 - The State Department of Education (The Department) dramatically simplified the components of the grievance process to address complaints of sex discrimination;
 - Schools may use a *single-investigator model*, and schools may choose to use this model in some, but not all, cases as long as it is clear in the *district's grievance procedures when it will use this model*, and
 - Schools may offer an informal resolution process for sex discrimination complaints unless the complaint includes allegations that an employee engaged in sex-based harassment of a student, or unless such a process would conflict with Federal, State, or local law.
- The Department did not specifically address the use of restrooms and locker rooms but did create a “de minimis” (lacking significance or importance: so minor as to be disregarded) standard for sex separation that is allowed by existing regulations.
- Current regulations allow Districts to provide separate toilet, locker room, and shower facilities on the basis of sex, so long as the facilities are comparable. The new regulations clarify that such “otherwise permissible sex separation is consistent with Title IX as long as it is carried out in a manner that does not impose more than de minimis harm on affected students.” The new regulations clarify that preventing someone from participating in school (including in sex-separate activities) consistent with their gender identity causes that person more than de minimis harm.
- The Department explicitly notes that it does not adopt the Federal Court of Appeals for the Eleventh Circuit’s reasoning when it determined that the statutory provision allowing schools to designate same-sex living facilities applied to bathrooms and locker rooms. The Department, instead, sided with other courts, finding that the provision addresses only living facilities and that the statute’s general anti-discrimination requirements apply to bathrooms and locker rooms.
- The new regulations do not address the eligibility criteria for athletic teams. It appears that the athletic eligibility criteria would be coming later.
- The new regulations *expand privacy protections* for students and others involved in sex discrimination claims and investigations.
 - Districts may not disclose *personally identifiable information* obtained in the course of complying with Title IX, with limited exceptions, such as when the recipient has prior written consent or when the information is disclosed to the parent of a minor. (The 2020 amendments included a narrower provision that prohibited a recipient from disclosing only the identity of certain individuals participating in a Title IX grievance procedure, with limited exceptions.)
 - A District’s grievance procedures must require reasonable steps to protect the privacy of the parties and witnesses while the grievance procedures are implemented, provided that the steps do not restrict the ability of the parties to obtain evidence and participate in the grievance procedures.
- The new regulations provide more explicit and broader requirements for Districts to support students and employees based on pregnancy or related conditions.
 - Districts must provide reasonable modifications for students based on pregnancy or related conditions, allow for reasonable break time for lactation for employees, and access to a clean, private lactation space for students and employees.

- When a student (or parents of a minor student) informs a staff member of a student's pregnancy or related condition, the district employee must provide the individual with information about the school's obligations to prevent discrimination.
- Schools cannot disclose personally identifiable information about reasonable modifications for pregnancy or related conditions, with limited exceptions.
- Districts must consult with one or more members of a student's IEP or Section 504 team when a student with a disability is a complainant or respondent.
 - If the complainant or respondent is a student with a disability, the recipient must require the Title IX Coordinator to consult with one or more members of the student's IEP or Section 504 team to determine how to comply with the requirements of the IDEA (Individual with Disabilities Act) and Section 504 throughout the grievance procedures.
- The Department has expanded the duties of the Title IX Coordinator and others responsible for implementing the District's grievance procedure. They must receive training related to their responsibilities promptly upon hiring or change of position and annually thereafter.
 - Districts must maintain for *seven years* each notification received by the Title IX Coordinator of conduct that reasonably may constitute sex discrimination under Title IX or the regulations, as well as documentation of the actions the District took to meet its obligations to respond promptly and effectively to complaints.
 - The Title IX Coordinator may also be the decision maker (under the single-investigator model).
 - Non-confidential employees are required to notify the Title IX Coordinator of conduct that might constitute sex discrimination under Title IX.
 - When the complainant or respondent is a student with a disability, the district must require the Title IX Coordinator to consult with a member of the student's IEP team.
- The final regulations allow districts to use a lower "preponderance of evidence" standard of proof to determine whether sex discrimination occurred unless the district uses "clear and convincing" in other comparable proceedings.
- The scope of covered conduct may extend beyond a school's borders.
 - Conduct that may constitute sex discrimination is covered if it occurs under a district's education program or activity in the U.S., including conduct that is subject to the district's disciplinary authority.
 - The District has an obligation to address a sex-based hostile environment under its educational program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the education program or activity or outside the U.S.
- For the first time, a resource, including language schools, can be used for policies, notices, and grievance procedures to assist with compliance before the new school year begins: Resources for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures under 2024 Amendments to the U.S. Department of Education's Title IX Regulations.

- While the Final Rule’s official publication in the Federal Register is forthcoming, an unofficial publication has been released and is included below, together with additional resources outlining key changes:
- [Unofficial Version of the Department’s 2024 Title IX Final Rule](#)
- [Fact Sheet: U.S. Department of Education’s 2024 Title IX Final Rule Overview](#)
- [Summary of Major Provisions of the Department’s 2024 Title IX Final Rule](#)

CABE's Policy Department will develop a new Title IX model policy and grievance procedures prior to the August 1, 2024 implementation date. For member districts subscribing to the Quarterly Policy Updates, please look for the new model policy in July’s edition, which will also include policy-related updates from the 2024 legislative session.