

# Title IX Training

## An Overview of New Regulations

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# Title IX

- 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 Regulations

- The Department of Education issued regulations on sexual harassment under Title IX effective August 14, 2020.
- The statutory language of Title IX does not include “sexual harassment”, but federal courts found that sexual harassment was a form of sex discrimination under Title IX.
- The new regulations replace guidance documents, issued by the Department of Education’s Office of Civil Rights, building on the federal court precedents.

# What the Regulations do...

- Define sexual harassment and other key terms
- Require schools to publicize how sexual harassment complaints are reported
- Create a mandatory response when there is a report of sexual harassment
- Set forth requirements for the grievance process and investigation
- Create training requirements for Title IX personnel

# Defined Terms

- Sexual Harassment
- Actual knowledge
- Complainant
- Respondent
- Formal Complaint

# Sexual Harassment

- (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).
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- 34 CFR 106.30

# Actual Knowledge

- Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to **any employee of an elementary and secondary school**. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent.
  
- 34 CFR 106.30

# Complainant and Respondent

- Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- 34 CFR 106.30



# Formal Complaint

- Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment... A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail...and by any additional method designated by the recipient... Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.
- 34 CFR 106.30

# Title IX Personnel

- Title IX Coordinator
  - Mandatory position and title
  - Contact to be displayed and published
- Investigator
  - Investigates allegations of sexual harassment
  - Can be a third party
  - Should not be the Coordinator
- Decision-maker
  - Weighs all evidence and makes determination
  - Cannot be the investigator or Title IX Coordinator

# Responding to Sexual Harassment

- Title IX requirements must be followed, and a school must appropriately respond, when the school has actual knowledge of sexual harassment that occurs in a school's education program or activity in the United States.
- 34 CFR 106.44

# When there is a Report of Harassment

- The district response must not be “deliberately indifferent or unreasonable in light of known circumstances”
- Supportive Measures- “individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment”

The Title IX Coordinator engages the Complainant to:

- discuss the availability of supportive measures;
- consider the complainant’s wishes with respect to supportive measures;
- inform of supportive measures with or without filing a formal complaint;
- explain the process for filing a formal complaint alleging sexual harassment against a respondent

# When There is a Formal Complaint

- A formal complaint triggers the school's grievance process, which must be made publicly available, be consistent and transparent, and meet the below standards:
  - Provide remedies to a complainant, designed to maintain complainant's equal access to education, when a respondent is found responsible.
  - Remedies can be punitive/disciplinary against the respondent.
  - The district cannot impose disciplinary sanctions without following the grievance process.
  - The district must provide an objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoids credibility determinations based on a person's status as a complainant, respondent, or witness.

# Mandatory Investigation Process

- The district is required to investigate all allegations in any formal complaint and upon receipt shall send the allegations to both the complainant and respondent (the “parties”).
- The district has the burden of gathering evidence and meeting the burden of proof.
- For both parties, the district must
  - allow the presentation of facts and expert witnesses and other inculpatory and exculpatory evidence.
  - provide the opportunity to select an advisor who may be, but need not be, an attorney.
  - send written notice of any investigative interviews, meetings, or hearings
  - send evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.
- The district may not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”).
- The privacy of a party’s medical, psychological, and similar treatment records must be protected and the district cannot access or use such records unless first obtaining the party’s voluntary, written consent to do so.
- The investigator must create an investigative report that fairly summarizes relevant evidence.

# When to Dismiss a Complaint

- A Complaint Must be Dismissed if...
- the definition of sexual harassment under Title IX is not met.
  - If appropriate, the alleged conduct can still be addressed by the district under other disciplinary policies outside of Title IX.
- A Complaint may be dismissed if:
  - The complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations.
  - The respondent is no longer enrolled or employed by the school.
  - Specific circumstances prevent the school from gathering sufficient evidence to reach a determination.

# Dismissing a Complaint

- The district must give all parties written notice of any dismissal (mandatory or discretionary) and the reasons for the dismissal, along with the district's right to appeal the same.
- The regulations do not set forth who makes the determination to dismiss a complaint, only that the dismissal comes from the district.



# Making a Determination

- If a complaint or allegation is not dismissed, the appoint decision-maker issues a determination.
  - The decision-maker cannot be the investigator or Title IX Coordinator.
- Before issuing the determination, the district must
  - send the investigative report to the parties
  - afford each party the opportunity to submit written, relevant questions of any party or witness,
  - provide each party with answers, and allow for additional, limited follow-up questions from each party.
- The decision maker must apply the evidentiary standard the district has previously chose to use for all Title IX complaints.
  - The standards are either preponderance of the evidence or clear and convincing evidence.

# The Written Decision

- The decision-maker must issue a written determination which includes:
  - findings of fact
  - determination as to whether alleged conduct occurred
  - rationale for determination
  - disciplinary sanctions
  - any remedies to be provided to complainant
  - appeal rights

# GRB is here to help

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