

TITLE IX

WHAT SCHOOL LEADERS, BOARD MEMBERS, AND TITLE IX COORDINATORS NEED TO KNOW

WHAT YOU NEED TO KNOW NOW

Your Policy Should Be Comprehensive. Your school's sex/gender harassment, discrimination, and misconduct policy should be more comprehensive than your traditional disciplinary procedures. Don't bury Title IX within bullying – you won't be compliant. Your policy should include the following required elements:

- Name and contact information for Title IX Coordinator;
- Jurisdictional information (to whom does the policy apply and when);
- Clear definitions of prohibited conduct and examples to help illustrate the concepts, especially regarding consent;
- Reporting mechanisms and options (where and how to file a report, confidential versus non-confidential reporting, in-school and out-of-school options, etc.);
- Interim and responsive measures (in-school and out-of-school resources);
- Resolution options (informal and formal options);
- Clear step-by-step outline of resolution process, including timeframes;
- Investigation protocol;
- Hearing procedures;
- Appeal options, if available;
- Clear prohibition on retaliation;
- Responses for false accusations.

Be Prompt, Fair, and Impartial. Under Title IX, resolution processes must be prompt, thorough, reliable, and impartial, and afford due process. Emerging legal requirements and best practices include:

- Providing clear, written notices to parties at various points of the process (e.g., notice of allegations, notice of investigation, notice of scheduled meetings, notice of investigation outcome, notice of hearing, notice of appeal, notice of appeal outcome);
- Affording parties an opportunity to pose questions during the investigation;
- Creating a comprehensive written investigation report that includes detailed rationales;
- Permitting parties to review the draft report and provide feedback and comments;
- Permitting questioning between the parties during the hearing process.

Your Staffing Under Title IX May Need to Grow and Change. Districts must identify separate individuals to serve as Title IX Coordinator, investigator, decision-maker, and appeals officer.

- The Title IX Coordinator should be a district-level position and have responsibility for coordinating response for all reports (student-on-student, employee-on-student, and employee-on-employee) and compliance.
- A building-level deputy Title IX Coordinator will help to assure that compliance is carried out across the district.
- Schools have flexibility in determining whether the investigators, decision-makers, and appeals officers are district-level or school-based positions.

Meet Specific Training Requirements. Best practices and proposed federal regulations dictate specific annual training, at a minimum, to the Title IX Coordinator, investigators, decision-makers, and appeals officers.

- Also consider the training required of other individuals, such as teachers, coaches, administrators, and school resource officers.
- Consider training needs when determining who will serve in your processes.

Key Role for Teachers as Mandatory Reporters.

- Teachers are clearly identified as responsible employees with authority to address student-on-student sexual harassment. In a school setting, teachers have a great deal of authority over their classrooms and school activities. Teachers who have knowledge of allegations of harassment have a duty to notify the Title IX Coordinator who will ensure that the school takes appropriate corrective action. K-12 administrators and teachers are also well aware of their duty as mandatory reporters for child abuse and child sex abuse. Consider syncing your reporting policies and training programs to cover both reporting duties.

Involvement of Parents/Guardians.

- Parents/guardians have a specific role to play in K-12 settings. School districts may tailor their Title IX practices to conform to their typical practices regarding parental/guardian involvement. For example, if state law or local practice typically recognize the right of a parent/guardian to file a report on behalf of a student or require parental/guardian notification before speaking with a student, then those practices should extend to Title IX-related matters, too.

Formal Hearings for Adjudications.

- Schools may have flexibility to decide whether to include formal hearings as a part of their adjudication process (unlike higher education, where live hearings are required). This will depend on state case law, education codes, board policies, and administrative procedures acts. Hearings may not be advisable with elementary and secondary students.¹ When no formal hearing occurs, parties must be able to question each other by submitting written questions, rather than using live cross-examination.

WHERE TO FOCUS YOUR EFFORTS: KEY CHANGES THAT K-12 SCHOOLS NEED TO MAKE

- **Designate a district-level Title IX Coordinator to lead all efforts.** Make sure that this person is clearly identified to all staff, students, parents/guardians, and families. The name and contact information should be readily available and easily found on websites, printed materials, posters, and other helpful resource documents.
- **Determine the staffing structure that is best suited for your district.** Begin to think about whether the investigator and/or decision-maker roles can be district-level positions or school-based positions (e.g., an investigator and/or decision maker within each school), or should be out-sourced. Consider ways to remove existing silos and centralize a process to resolve all reports (e.g., student-on-student, employee-on-student, and employee-on-employee).
- Documentation should be thorough, perhaps much more so than typical for school disciplinary procedures. Ensure that your staff are clearly documenting, in writing, all steps in the process, all information shared with or given to parties, all investigative materials and reports, any delays

¹ Note, of course, that schools must always conform to their general state law due process requirements regarding suspensions/expulsions, which may include some form of hearing before school officials, when applicable. Schools are not precluded from using live hearings for cases involving employee responding parties. Schools will have to determine whether to use live hearings for employee cases, being mindful of any existing due process procedures that exist in collective bargaining agreements or employment contracts.

from established timeframes, and any interim measures granted. Training materials and records confirming attendance should also be maintained. Records should be kept at a minimum for three years, or longer if required by your state records laws.

- Implement a series of ongoing, specialized trainings for all individuals involved in the resolution process to include the Title IX Coordinator, investigators, decision-makers (hearing officers and appeals officers), teachers and other instructional staff, and school resource officers, among others. Also, consider providing annual training to teachers, staff, students and parents/guardians on your policy, procedures, and resources.
- Review your existing policy and procedures to determine necessary changes to ensure compliance with federal, state, and local laws. Specifically consider two policy areas that may often be overlooked in K-12 settings:
 - » Be prepared to allow and include advisors in all your Title IX processes. Be sure to provide this opportunity equally to all parties. Under the proposed draft regulations, all parties are permitted an advisor of their choice who may be present at any meeting or any other part of the proceeding. The person could be a teacher, coach, parent/guardian, attorney, or any other person chosen by the party.
 - » Continue to provide interim/supportive measures during your case resolution process but be sure to tailor them to the specific situation. Supportive measures should be available to all parties, should be non-disciplinary, provided free-of-charge, and should restore and/or preserve access to educational/employment opportunities for all parties. Examples include: counseling, extensions of deadlines or other academic/work adjustments, modifications of work or class schedules, escort services, travel accommodations, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security, and monitoring of certain areas of the school. Consider, too, any special implications for students with an IEP, especially if there is a manifestation determination.

