

Title IX

As amended by The Final Rule to take effect August 14, 2020

Background

- On May 6, 2020, the U.S. Department of Education released its Final Rule under Title IX of the Education Amendments of 1972.
 - The Final Rule amends numerous sections of Title IX and the requirements thereunder. Such changes include, but are not limited to, a change to the definition of sexual harassment, how actual knowledge of sexual harassment is determined, how to train employees responsible for Title IX enforcement, and modifications to the appeals process.
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New Definition of Sexual Harassment

Conduct on the basis of sex that satisfies one or more of the following:

- A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e. quid pro quo); or
 - Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
 - Sexual assault (as defined in the Clery Act as: any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent), dating violence, domestic violence, or stalking (as defined in the Violence Against Women Act as: engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) Fear for the person's individual safety or the safety of others; or (2) Suffer substantial emotional distress.).
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Important Terms

- **Complainant** – An individual who is alleged to be the victim of conduct that could constitute sexual harassment.
 - **Respondent** – An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
 - **Title IX Coordinator** – The person who oversees the grievance process and coordinates communication between the school and the parties.
 - **Investigator** – The person conducting the investigation into the allegations of sex discrimination and/or harassment. This person can be the Title IX Coordinator.
 - **Decision Maker** – The person who reviews all the information/evidence gathered by the investigator and decides whether or not the sex discrimination and/or harassment occurred. This person is not the Title IX Coordinator or the Investigator.
 - **Appeals Decision Maker** – The person who makes the final determination in the event an appeal is filed. This person is not the Title IX Coordinator, the Investigator, or the original Decision Maker.
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Who can file a complaint?

- Anyone.
 - There is no time limit or statute of limitations on a complainant's decision to file a formal complaint.
 - Under the Final Rule, a school is found to have actual knowledge of sexual harassment when: the school's Title IX Coordinator has received notice, when an official of the school has received notice, and when any employee of the school has notice of sexual harassment or an allegation thereof.
 - This is an important change.
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Process

- Schools must respond when sexual harassment occurs in the school's education program or activity, against a person in the United States. Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs.
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Step One:

- Inform the Title IX Coordinator

Step Two:

- Determine whether Supportive Measures are appropriate
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Supportive Measures

- Supportive measures are 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 must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.
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Step Three:

Send out first notices

- Written notice must be sent to the parties within three business days of the filing of a formal complaint.
 - The notice will include:
 - key details of the alleged sexual harassment incident
 - who was involved
 - when and where the alleged incident occurred
 - the alleged misconduct that constitutes sexual harassment
 - any known possible violation of the code of conduct
 - potential consequences
 - a copy of the school's grievance process
 - Interviews with a respondent may not occur until this notice has been provided and the respondent is provided reasonable time to prepare before an initial interview.
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Step Four:

- Determine whether the complaint should be dismissed

Mandatory Dismissals of Complaints

The School must dismiss a complaint of harassment on the basis of sex when:

1. The conduct in the complaint does not meet the definition of sexual harassment;
2. The alleged sexual harassment did not occur within the school's education program or a school activity;
3. The alleged sexual harassment did not occur in the United States at all.

Complaints falling into these categories can still be processed ~~under the school's code of conduct.~~

- Determine whether the complaint should be dismissed

Discretionary Dismissals of Complaints

The School may dismiss a complaint of harassment on the basis of sex when:

1. The Complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdrawal some or all of the allegations within the formal complaint;
 2. If the respondent no longer is enrolled in the school, or employed by the school; or
 3. If specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations.
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Step Five:

- The Investigator Gathers Information
 - Provide equal opportunity to all parties to provide witnesses and evidence, including written expert testimony and inculpatory and exculpatory evidence.
 - Parties cannot be prevented from discussing the allegations or collecting relevant evidence.
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- Conduct Interviews
 - Provide the respondent with written notice prior to any interviews or meeting involving the Title IX complaint. The notice will include the date, time, location, participants, and purpose of the interview/meeting and will allow the respondent enough time to properly prepare for the meeting.
 - Allow for Written Questions
 - Parties have the opportunity to provide relevant written questions to each other before the decision maker reaches a determination. In the event the decision maker decides not to allow a particular question, the decision maker must explain to the parties why the question is not relevant to the determination.
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Step Six:

- The Opportunity for Inspection and Response
 - After the evidence is collected, the parties must be provided with the evidence and given ten days to respond to the evidence in writing. If a party submits a response to the evidence, the investigator must consider that response before finalizing the investigative report.
 - The investigator will then prepare an investigative report regarding the allegations in the complaint. The report will fairly summarize the evidence the school gathered about the alleged incident.
 - Once finalized, the report must be submitted to the parties in electronic form, or a hard copy. The parties then have another 10 days to provide additional information before a determination is made.
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Step Seven:

- The Determination
 - The decision maker will objectively review the relevant evidence and investigative report to reach conclusions about whether the respondent engaged in the alleged harassment.
 - The decision maker must use independent judgment, so the decision maker is not the same person who conducted the investigation and cannot be the school's Title IX Coordinator.
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- The determination must be written and include at a minimum, the following information:
 1. The school's policy/policies that were alleged to be violated;
 2. A description of the procedural steps that were taken (including notices sent, interviews conducted, evidence gathered);
 3. A section detailing the findings of fact;
 4. A conclusion section that applies the facts to the relevant policy/policies;
 5. A statement and rationale regarding the ultimate determination of responsibility;
 6. Any disciplinary sanctions the school will impose and any remedies to the complainant if applicable;
 7. A statement of the rationale for the remedies to the complaint and how those remedies will restore or preserve equal access;
 8. A statement of the school's procedures and a statement regarding the parties' rights to appeal the initial determination of responsibility and the permissible basis for an appeal.

 - The determination must be sent to the parties simultaneously along with the appeals information.
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Appeals

- Grounds for Appeals

1. If a party believes that procedural irregularity altered the outcome of the determination or dismissal.
 2. New evidence has been discovered that was not reasonably available at the time of the determination or dismissal. *An appeal for this reason may occur after the five day appeal requirement but not after one year.
 3. A conflict of interest on the part of a Title IX Coordinator, investigator who compiled evidence, or the decision maker existed, and that conflict of interest affected the determination or dismissal
You can offer more grounds for appeal; but the grounds must apply to both parties
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- To file an appeal, a party must notify the Title IX Coordinator in writing within 5 days that they wish to appeal the determination.
 - All parties will have an equal opportunity to submit a written statement supporting or challenging the determination.
 - The Title IX Coordinator will inform the parties that they have 7 days to submit their written statements.
 - The person who will decide the appeal cannot be the decision maker, the investigator, or the Title IX Coordinator. Upon review of the parties' written statements (if they so choose to provide them), and review the determination, the appeals decision maker will issue a written decision and send it to the parties simultaneously. The determination becomes final after the appeals process.
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Remedies

- If the school makes a determination that sex discrimination/harassment did occur, the school will help effectively implement remedies for a complainant.
 - If upon the conclusion of this grievance process, discipline appears warranted, the school will follow the usual disciplinary process for students outlined within the student handbook. The school will also follow the required disciplinary process for school employees.
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