

# Sexual Harassment: The Law, 2020 Regulations and More

Maree Sneed

December 2023



# YES/NO POLL

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Did you participate in the ACES Title IX sexual harassment professional development in October of 2022?

**Understanding  
the Audience**

## POLL: Fist to Five

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On a scale of 0–5, how accurate is the following statement from your perspective?

*Since the beginning of the 2023-24 school year, my district or school has had at least one reported incident of alleged sexual harassment.*

0 – Completely inaccurate

1 – Pretty inaccurate

2 – Slightly inaccurate

3 – Not accurate, but not inaccurate

4 – For the most part accurate

5 – Completely accurate

## POLL: Fist to Five

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On a scale of 0–5, how accurate is the following statement from your perspective?

*I have the information I need to conduct an investigation of alleged sexual harassment.*

- 0 – Completely inaccurate
- 1 – Pretty inaccurate
- 2 – Slightly inaccurate
- 3 – Not accurate, but not inaccurate
- 4 – For the most part accurate
- 5 – Completely accurate

## POLL: Fist to Five

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On a scale of 0–5, how accurate is the following statement from your perspective?

*I have the information that I need to write an investigation report.*

0 – Completely inaccurate

1 – Pretty inaccurate

2 – Slightly inaccurate

3 – Not accurate, but not inaccurate

4 – For the most part accurate

5 – Completely accurate

# Agenda

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- ❑ Title IX Overview
- ❑ Title IX: The Law and Regulations
- ❑ 2020 Title IX Sexual Harassment Regulations and Guidance
- ❑ Investigation and Investigation Report
- ❑ Examples of OCR Voluntary Resolutions
- ❑ Biden Administration's Proposed Title IX Regulations
- ❑ Connecticut Bullying/Harassment Laws
- ❑ Q&A

# Title IX Overview

# Title IX

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- **Title IX of the Education Amendments of 1972** (20 U.S.C. § 1681) –  
*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 prohibits sex discrimination in education and in employment.



# What entities are covered by Title IX?

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- Institutions receiving federal funding
- School districts, colleges/universities, charter and for-profit schools and athletic associations
  - Including organizations receiving “significant assistance” from these
- Educational programs offered by non-education institutions that receive federal funds, such as libraries, prisons, and museums



# Who is protected by Title IX?

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- Elementary through professional school
- Staff and students
- Men/boys, women/girls, and gender-nonconforming individuals
- Heterosexual, gay, lesbian, bisexual, and transgender persons
- Individuals with and without disabilities
- Individuals of different races, ethnicities and national origin
- U.S. citizens and non-citizens (including undocumented persons)



# Response to Alleged Violations of Title IX

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- Districts have an affirmative obligation to respond appropriately to potential Title IX violations.
- Required response depends on the type of sex discrimination:
  - Sexual harassment or
  - Other types of sex discrimination.



# Responding to Allegations of Sex Discrimination

|   | <b>Sexual harassment</b>   | <b>Other sex discrimination</b>  |
|---|--|--|
| <b>What type of sex-based conduct does this apply to?</b> | <ol style="list-style-type: none"> <li>1. Quid pro quo</li> <li>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”</li> <li>3. Sexual assault, dating violence, domestic violence, stalking</li> </ol> | Hostile environment – the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school |
| <b>When is a school required to respond?</b>              | When it has actual knowledge of the conduct  | When it knows or reasonably should know about the conduct  |
| <b>How must a school respond?</b>                         | Promptly and not with deliberate indifference (i.e., not clearly unreasonable in light of the known circumstances)   | Promptly and equitably   |
| <b>Other notes</b>  | The regulations include specific requirements and grievance procedures that must be followed   | Same as required response to discrimination based on other protected statutes (e.g., race, disability)   |

# Violations of Title IX?

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- A district operates a STEM magnet school that has admission criteria. Enrollment in magnet school is 70% male and 30% female.
- A male teacher tells a female student he will give her an A on a test if she will give him a hug.
- A lesbian high school student wants to bring her girlfriend to a school event where students can bring dates. Teachers refuse to sell her tickets. The teachers tell her that bringing a girl as a date “is not appropriate for school” and suggests that student bring a boy or come alone.
- A district refuses to provide accommodations to transgender girls who are not comfortable using the boys’ restrooms.
- A fifth grade male student touches a female student’s breasts during recess.
- A pregnant high school student is told that she cannot run for president of student government because she is pregnant.

# Risks of Violation of Title IX

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- **Private litigation**
  - Students (and parents on behalf of their children) may sue districts. School districts may have to pay money damages when districts are found to have violated Title IX by failing to respond appropriately or to address adequately sex discrimination.
- **Office for Civil Rights (“OCR”) complaint/investigation**
  - A student, parent, or third party may submit a complaint to OCR, and OCR may investigate.
  - OCR may initiate its own investigations.
  - OCR may refer a case to the U.S. Department of Justice (“DOJ”).
- **DOJ complaint/investigation**

# Enforcement of Title IX: Office for Civil Rights

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- The OCR is part of the U.S. Department of Education (“ED”).
- What OCR does:
  - Policy guidance
  - Technical assistance
  - Civil Rights Data Collection (“CRDC”)
  - Enforcement
    - Complaint process
    - Compliance reviews
    - Voluntary resolution
    - Administrative hearing
    - DOJ referral

*“The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.”*

# Catherine Lhamon, ED Assistant Secretary for Civil Rights

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- Ms. Lhamon is Assistant for Civil Rights at ED.
- She served in this role during the Obama Administration.





# Enforcement of Title IX: Department of Justice

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- What DOJ does:
  - Equal Education Opportunities (“EEO”) section in DOJ responsible for enforcing Title IX
  - EEO section led by Shaheena Simone
  - EEO section has authority to:
    - Review complaint from OCR
    - Investigate complaint and file lawsuit
    - Intervene in private lawsuit

*“The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.”*

# Kristen Clarke, DOJ Assistant Attorney General for Civil Rights

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- Prior to becoming Assistant Attorney General, Ms. Clarke worked at DOJ and the NAACP Legal Defense Fund.



# TRUE/FALSE POLL

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Title IX rules only protect students.

# TRUE/FALSE POLL

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Sexual harassment is sex discrimination prohibited by Title IX.

# YES/NO POLL

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A counselor receives an email from Student A -- middle school student -- alleging that her math teacher caressed her exposed lower back and kissed her several times and had done the same to two other students. Student A says that she has been skipping math class for the last 3 weeks.

**Is this a Title IX violation?**

# YES/NO POLL

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A high school girl tells a group of boys a sexual joke during English class.

**Is this a Title IX violation?**

# YES/NO POLL

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When he starts middle school, a transgender boy introduces himself as Jerry and tells his classmates that he is using he/him pronouns. Some of his former elementary classmates out him to others, calling him transphobic slurs, pushing him and calling him by his former name.

**Is this a Title IX violation?**

# Title IX: The Law and Regulations



# Overview of Sexual Harassment Guidance/Regulations

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- **1975** -- Regulations first issued by the Department of Health, Education, and Welfare (ED's predecessor) did not address sexual harassment as a form of sex discrimination.
- **1997–2020** -- ED addressed sexual harassment through a series of guidance documents.
- **2018** – Trump Administration published proposed regulations to address sexual harassment.
- **2020** – Trump Administration published regulations addressing sexual harassment on May 19, 2020. Regulations became effective August 14, 2020.
- **September 4, 2020** -- Trump Administration issued a [Q&A](#) regarding implementation of 2020 regulations.

# Biden Administration and Title IX

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- **January 2021** – President Biden issued [Executive Order](#) on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.
- **Jan. 15, 2021**-- Biden Administration issued additional Q&A ([Part 1](#) and [Part 2](#)) to supplement the Sept. 4, 2020 Q&A.
- **March 8, 2021** -- President Biden issued [Executive Order](#) on Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity.
- **April 6, 2021** -- OCR announced comprehensive review of Title IX regulations.
- **June 16, 2021** -- OCR issued [Notice of Interpretation](#) confirming that prohibition on sex discrimination includes discrimination based on sexual orientation or gender identity.
- **July 2021** -- OCR issues a [Q&A and related Appendix](#) regarding its interpretation of schools' obligations under the regulations.

# Biden Administration and Title IX

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- **June 23, 2022** – Biden Administration proposed changes to 2020 sexual harassment regulations.
- **September 12, 2022** – ED established deadline for providing comments to proposed regulations.
- **September 13, 2022 – to ???** – ED reviewed comments and we are waiting for final regulations.

**The 2020 regulations are in effect until the 2022 regulations are finalized and ED provides date when 2022 regulations become effective.**

# When will we see the new Title IX regulations?

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## “Controversy Over Ed Dept. Title IX Overhaul Expected to Fuel Further Delays”

By [Linda Jacobson](#), The 74 September 1, 2023

- “President Biden vowed to rewrite the Trump-era rule and extend protections to LGBTQ students, but Republicans continue to push back in court.
- President Joe Biden is closing in on the last year of what he hopes will be his first term, but he’s yet to complete one of his major campaign promises — rewriting the Title IX rule that prohibits sexual discrimination and harassment in education, including a sweeping expansion to include transgender students in sports.
- Republicans have called on the administration to [abandon the rewrite](#) and are [already suing](#) the administration for its interpretation that Title IX covers sexual orientation and gender identity. But Democrats say transgender students need the overhaul to combat discrimination and harassment in school. Excluding trans students from using bathrooms and playing on sports teams consistent with their gender identity denies their civil rights, they say.”

# When will we see the new Title IX regulations?

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The 74 article continued . . .

- “The U.S. Department of Education is still reviewing “a historic number of comments” from the public on the proposed regulations, according to a department spokesperson, and is now likely to miss its own October deadline for release.
- The department’s Office for Civil Rights received almost 240,000 comments on the primary rule, and more than 156,000 on the athletics rule. The department plans to release both portions at the same time, but the draft rule still faces review from the Office of Management and Budget, a required step that typically lasts 120 days.
- While department officials declined to say if they’d miss the deadline, one expert is skeptical.”

# 2020 Title IX Sexual Harassment Regulations and Guidance

# Where can I find the text of the 2020 regulations?

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2020 sexual harassment regulations can be found by clicking this link:

<https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

The text of the 2020 regulations begins at page 30,572. The information leading up to the text is called the “preamble.”

# Biden Administration Title IX guidance

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- Includes 67 Questions & Answers that clarify how OCR interprets schools' existing obligations under Title IX sexual harassment regulation.
- Provides Appendix with examples of Title IX procedures that may be helpful to or adapted by schools/districts as appropriate.



# What do the 2020 regulations require?

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Generally, the 2020 regulations require a school or district to respond “promptly” and not in a “deliberately indifferent” manner (i.e., not “clearly unreasonable in light of the known circumstances”) when it has “actual knowledge” of “sexual harassment” in its “education program or activity” against a person in the United States.

# Summary of basic steps in 2020 regulations

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1. District or school receives actual knowledge of conduct that may constitute sexual harassment.
2. District-level or school-based Title IX Coordinator meets with alleged victim to discuss supportive measures and process for filing a formal complaint.
3. Investigator leads investigation after formal complaint is in place and written notice is given to involved individuals and their parents/guardians. Investigator gathers and reviews evidence, allows responses to the evidence, and prepares an investigative report; involved individuals and their parents/guardians review and respond to the report.
4. Decision-maker provides opportunity for involved individuals and their parents/guardians to prepare written questions to be answered by other side. Decision-maker reviews all materials and makes written responsibility determination – an impartial determination as to whether alleged conduct occurred – including sanctions.

# July 2021 ED Title IX guidance

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## Preventing Sexual Harassment

- While Title IX regulations focus on district's required response to instances of alleged sexual harassment, district also should consider strategies to prevent sexual harassment from occurring.
- “OCR encourages schools to undertake prevention efforts that best serve the needs, values, and environment of their own educational communities.” (Q3)

## Responding to Sexual Harassment

- District may do more – but they must not do less – than what is required under Title IX sexual harassment regulations.
- “A school may take additional actions so long as those actions do not conflict with Title IX or the 2020 amendments” (Q2)

## Key Title IX Players

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- **Title IX Coordinator**
- **Investigator**
- **Decision-Maker**

# Who's Who – Title IX Coordinator

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- OCR regulations require a district to have at least one district-level Title IX Coordinator. Connecticut law requires a Title IX Coordinator at each school.
- Title IX Coordinator's overall responsibility is to coordinate compliance efforts by, for example:
  - Developing materials and ensuring that professional development occurs for staff involved in Title IX efforts;
  - Creating systems to centralize records and gather relevant data;
  - Meeting with alleged victim and parents/guardians once made aware of alleged sexual harassment (cannot be delegated to support staff);
  - Coordinating implementation of supportive measures;
  - Signing a formal complaint to initiate grievance process (cannot be delegated to support staff).

# Who's Who – Title IX Coordinator

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- If a district has a district-level Title IX Coordinator and also has school-based Title IX coordinators, a district may designate certain Title IX Coordinator responsibilities for the district-level Title IX Coordinator and certain responsibilities for the school-based Title IX coordinators.
- District-level Title IX Coordinator should, for example:
  - Develop materials and ensure that professional development occurs for staff involved in Title IX efforts.
  - Create systems to centralize records and gather relevant data.
- School-based Title IX coordinators may, for example:
  - Meet with alleged victim and parents/guardians once made aware of alleged sexual harassment (cannot be delegated to support staff).
  - Coordinate implementation of supportive measures.
  - Sign a formal complaint to initiate grievance process (cannot be delegated to support staff).

# Who's Who – Title IX Coordinator

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- District must post District Title IX Coordinator's contact information prominently on District website and in any District handbooks and catalogues.
- District Title IX Coordinator's contact information must include:
  - name/title;
  - office address;
  - email address; and
  - phone number.
- District must provide District Title IX Coordinator's contact information to:
  - students and students' parents/guardians;
  - employees; and
  - applicants.

# Who's Who – Title IX Coordinator – Hypothetical 1

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A district has two administrators who are responsible for Title IX and the administrators divide their oversight over sexual harassment complaints. The Title IX Coordinator oversees allegations of student-to-student sexual harassment. The Executive Director of Talent and Human Resources oversees allegations of staff-involved sexual harassment. The Executive Director of Talent and Human Resources maintains all of the sexual harassment case files and the Title IX Coordinator does not have direct access to the sexual harassment files and is not aware of the contents of the files.

**YES/NO:** Is the district in compliance with the Title IX regulations?



## Who's Who – Title IX Coordinator – Hypothetical 2

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A district identifies an administrator as the Title IX Coordinator, but the Title IX Coordinator does not coordinate the district's efforts to comply with Title IX, does not investigate allegations of student-to-student sexual harassment and does not receive notice of the outcome of the investigations. The district identifies the Anti-Bullying Coordinator as the person responsible for overseeing student-to-student complaints alleging violations of Title IX, but the Anti-Bullying Coordinator does not report to or notify the Title IX Coordinator of allegations of Title IX complaints. The district refers allegations of employee-to-student complaints to a state agency for investigation and does not investigate complaints after the state agency has identified concerns.

**YES/NO:** Is the district in compliance with the Title IX regulations?

## Who's Who – Title IX Coordinator – Hypothetical 3

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A district's website does not include contact information of the Title IX Coordinator. The district's Affirmative Action Page includes the Title IX Coordinator's name, identifies her as "Assistant Superintendent, Human Resource Services," and provides her office address and telephone number. The Affirmative Action Page does not identify the individual as Title IX Coordinator and the Discrimination/Harassment complaint form for complaints filed by employees identifies the Title IX Coordinator only as the Affirmative Action Officer.

**YES/NO:** Is the district in compliance with the Title IX regulations?

# Who's Who – Title IX Coordinator – Hypothetical 4

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A district has designated as its Title IX Coordinator an administrator who is also serving as the district's liaison for Communities of Care, the district's prevention coordinator, and the district's translation services coordinator. In addition, the administrator is responsible for conducting disciplinary hearings, overseeing safety interventions (e.g., restraints) and secretaries for elementary schools; attending meetings of school clusters and serving as a central office liaison for approximately 60 elementary schools. The Title IX Coordinator has expressed concern that, given his other responsibilities, he does not have sufficient time to carry out his Title IX obligations.

A parent requested a copy of the district's written position description for the Title IX Coordinator, a list of the position's job responsibilities, and any directives or guidelines for when school-based staff should contact the Title IX Coordinator regarding complaints or reports of sexual harassment. The district tells the parent that it does not have the information requested.

**YES/NO:** Is the district in compliance with the Title IX regulations?

# Who's Who – Investigator

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- Investigator carries out investigation by conducting interviews of involved individuals and witnesses, collecting documentary and other evidence, and drafting investigative report.
- District or school-based Title IX Coordinator may serve as Investigator.
- School-based administrator also may serve as Investigator.

# Who's Who – Decision-maker

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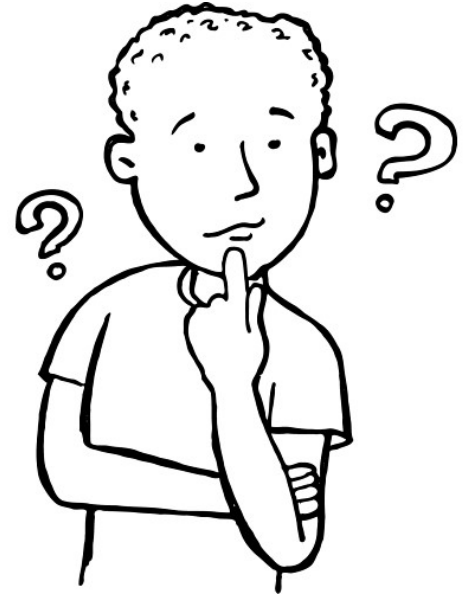
- Decision-maker makes responsibility determination and makes this determination by applying the standard of evidence selected by the district -- “preponderance of the evidence” or “clear and convincing.”
- Investigator may not be the Decision-maker, but the Investigator may offer recommendations to the Decision-maker.
- The Decision-maker may be the Title IX Coordinator, another central office administrator or a school-based administrator if they have not been the Investigator.

# “Actual knowledge”

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District must investigate allegations of sexual harassment when it has **actual knowledge** of conduct that may constitute sexual harassment.

- A school or district has **actual knowledge** when notice or allegations of sexual harassment are reported to any school employee; or any employee personally observes such behavior. A district employee includes the Title IX Coordinator, administrators, teachers, teacher’s aides, bus drivers, cafeteria workers, counselors, school resource officers, maintenance staff workers, or any other employee.
- Actual knowledge is met when any employee:
  - Witnesses the conduct;
  - Hears about the conduct from the alleged victim or anyone else (e.g., parent, friend, peer, anonymous reporter); or
  - Receives a written report of the conduct from the alleged victim or anyone else.



# “Sexual harassment” is conduct on the basis of sex that is...

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## Category 1

Quid pro quo harassment by a school employee to a student – the employee conditions some type of aid, benefit, or service on the student’s participation in unwelcome sexual conduct

## Category 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”

## Category 3

Other conduct defined by federal law:

- Sexual assault
- Dating violence
- Domestic violence
- Stalking

“Where conduct is sexual in nature, or where conduct references one sex or another, that suffices to constitute conduct ‘on the basis of sex.’”

85 Fed. Reg. at 30,146

# “Education program or activity”

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- “Education program or activity” includes locations, events, or circumstances over which a school district exercised substantial control over the alleged perpetrator and the context in which the sexual harassment occurred
- Depending on the circumstances, may cover incidents that occur off school district property or online (e.g., field trip, school district’s digital platform)



## Determination of Student-to Student Sexual Harassment and Whether Is Hostile Environment

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- In making determination of student-to-student sexual harassment and whether there is hostile environment, OCR looks at totality of circumstance and variety of factors:
  - whether unwelcome to student(s);
  - degree to which conduct affected one or more students;
  - type, frequency and duration of conduct;
  - identity and relationship between alleged harasser(s) and subject(s) of harassment;
  - number of individuals involved;
  - age and sex of alleged harasser(s) and subject(s) of harassment;
  - size of school and location of incident;
  - other incidents at school; and
  - whether there are also incidents of gender-based non-sexual harassment.
- OCR looks at conduct from objective and subjective perspective.

## Determination of Employee-to Student Sexual Harassment Outside Employee's Job Responsibilities and Whether Is Hostile Environment

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- In making determination of employee-to student sexual harassment outside employee's job responsibilities and whether there is hostile environment, OCR looks at totality of circumstance and variety of factors:
  - whether unwelcome to student(s);
  - degree to which conduct affected one or more students;
  - type, frequency and duration of conduct;
  - identity and relationship between alleged harasser(s) and subject(s) of harassment;
  - number of individuals involved;
  - age and sex of alleged harasser(s) and subject(s) of harassment;
  - size of school and location of incident;
  - other incidents at school; and
  - whether there are also incidents of gender-based non-sexual harassment.
- OCR looks at conduct from objective and subjective perspective.

## Determination of Employee-to-Student Sexual Harassment In Context of Job Responsibilities and Whether Is Hostile Environment

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- When employee engages in sexual harassment in context of carrying out job responsibilities related to providing aids, benefits or services to students and harassment denies student's ability to participate in or benefit from school's programs or activities on basis of sex, district is deemed responsible for harassment and remedying effects.
- This type of sexual harassment is quid pro quo.
- Regardless of whether student resists, suffers the threatened harm or submits and avoids the harm, employee's harassment is attributed to the district and OCR deems district to have treated student differently based on sex.

# TRUE/FALSE POLL

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Title IX covers employee-to-student sexual harassment.

## Determination of Employee-to-Student Sexual Harassment In Context of Job Responsibilities and Whether Is Hostile Environment (continued)

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- In determining quid pro quo harassment, OCR considers variety of factors:
  - type and degree of responsibility given to employee;
  - degree of influence employee has over student, including circumstance in which harassment occurred;
  - where and when occurred;
  - age and educational level of student involved; and
  - whether, as applicable, in light of student’s age and educational level and way school is run, it is reasonable to believe employee in position of responsibility over student, even if employee was not.

# TRUE/FALSE POLL

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Districts do not have to follow the 2020 regulations unless they are sure sexual harassment has occurred.

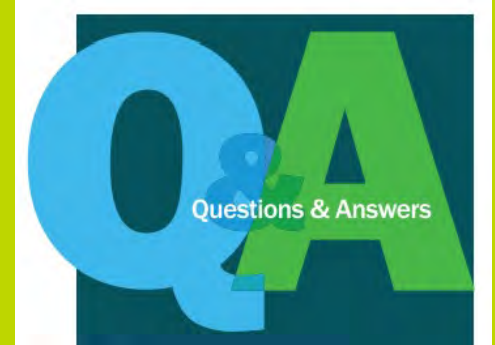
# Required response

|   | Sexual harassment  | Other sex discrimination   |
|---|--|--|
| <b>What type of sex-based conduct does this apply to?</b> | <ol style="list-style-type: none"> <li>1. Quid pro quo</li> <li>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”</li> <li>3. Sexual assault, dating violence, domestic violence, stalking</li> </ol> | Hostile environment – the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school |
| <b>When is a school required to respond?</b>              | When it has actual knowledge of the conduct  | When it knows or reasonably should know about the conduct  |
| <b>How must a school respond?</b>                         | Promptly and not with deliberate indifference (i.e., not clearly unreasonable in light of the known circumstances)   | Promptly and equitably   |
| <b>Other notes</b>  | The regulations include specific requirements and grievance procedures that must be followed   | Same as required response to discrimination based on other protected statutes (e.g., race, disability)   |

# July 2021 Title IX guidance

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“At any school level – elementary, secondary, or postsecondary – actual knowledge refers to notice of conduct that *could* constitute sexual harassment . . . Thus, the preamble explains that a school must respond promptly and appropriately when it receives notice of alleged facts that, if true, could be considered sexual harassment under the 2020 amendments.” (Q18)





# TRUE/FALSE POLL

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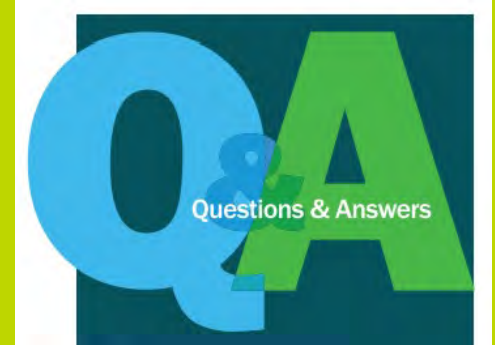


If bad behavior occurs that is not covered by the definition of sexual harassment, districts may investigate and respond.

# July 2021 Title IX guidance

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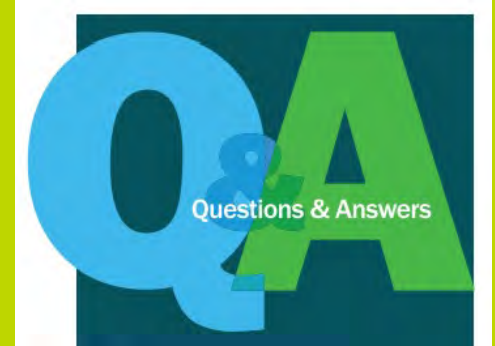
“A school has discretion to respond appropriately to reports of sexual misconduct that do not fit within the scope of conduct covered by the Title IX grievance process. This may include, for example, reported sexual misconduct that a) occurs outside of a school’s education program or activity; b) occurs outside of the United States; or c) causes harm in the school environment that does not fit within the definition [of “sexual harassment” in the regulations].” (Q7)



# July 2021 Title IX guidance

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“OCR encourages schools to develop and enforce their codes of conduct as an additional tool for ensuring safe and supportive educational environments for all students. OCR does not enforce school codes of conduct but may investigate complaints that a school’s code of conduct treated students differently based on sex, including sexual orientation or gender identity.”



# Response Checklist

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- Incident-specific response:
  - Complainant(s) and parents
  - Respondent(s) and parents
  - Staff
- School-wide response:
  - Students
  - Staff
  - Parents

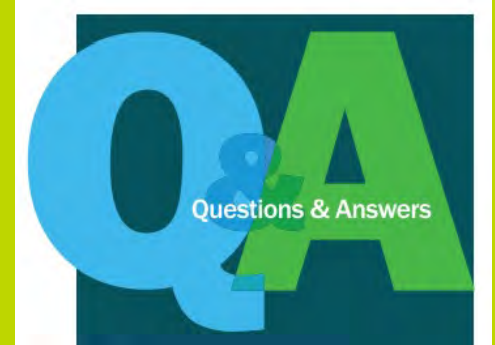


The nature of these steps will depend on the ages/status of the victim(s) and perpetrator(s), and the context of the harassment.

# July 2021 Title IX guidance

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“The 2020 amendments permit a parent or legally authorized guardian to act on behalf of the complainant or respondent . . . . If a parent or guardian has a legal right to act on a complainant or respondent’s behalf, this authority applies throughout all aspects of the Title IX matter, including throughout the grievance process.” (Q40)



# “Dangerous Words,” compiled by National Women’s Law Center

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- Just ignore it.
- He puts his arms around everyone.
- Why can’t you learn to accept a compliment?
- You must have wanted it - otherwise you would have told him no.
- That’s how they do things where he comes from.
- It’s a joke. Lighten up.
- No one’s filed a charge so our hands are tied.
- We’ve never had a complaint, so we don’t have a problem.
- This kind of behavior is all a part of growing up.
- It’s a matter of hormones, we can’t control that.
- If we had to discipline every student who used bad language, we’d never get anything else done.
- It’s just a prank that got out of hand.
- Oh well, boys will be boys.

# Responding to Allegations of Sexual Harassment

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## The basic command

- If a district has actual knowledge of sexual harassment allegations, district must respond promptly and in a manner that is not deliberately indifferent (i.e., not “clearly unreasonable in light of the known circumstances”).
- District must offer “supportive measures” to alleged victim (complainant) and follow grievance process that meets certain minimum requirements before imposing discipline or other actions that are not supportive measures against an alleged perpetrator (respondent).
- District may not continue with the grievance process in the absence of a formal complaint.

# Responding to Allegations of Sexual Harassment

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First, ensure that procedures comply with 2020 regulations.

- Districts must notify stakeholders and publish on its website and in its handbooks and catalogs:
  - Title IX Coordinator contact information: name, office address, email, phone number and
  - General statement regarding nondiscrimination on the basis of sex.
- Districts must adopt and publish grievance procedures that provide for prompt and equitable resolution of student and employee complaints alleging sex discrimination and a grievance process specific to sexual harassment allegations that meets certain minimum requirements.
  - Grievance procedures and grievance process must describe how to report or file complaint of alleged sex discrimination, how to report and how district will respond.



# Responding to Allegations of Sexual Harassment

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## Overview of select general requirements for the grievance process:

- Provide for the “prompt and equitable” resolution of student and employee complaints.
- Treat complainants and respondents equitably.
- Require objective evaluation of all relevant evidence.
- Require that Title IX Coordinator, Investigator, Decision-maker, or any other key player have no conflicts of interest or bias for or against complainants or respondents, and that all such individuals receive specified professional development.
- Include a presumption of innocence for respondents.

# Responding to Allegations of Sexual Harassment

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- District must ensure that it is not deliberately indifferent in responding to sexual assault or sexual harassment.
- Deliberate indifference occurs when a school has actual knowledge of sexual assault or sexual harassment and the school's response is clearly unreasonable based on the known circumstance.

# YES/NO POLL

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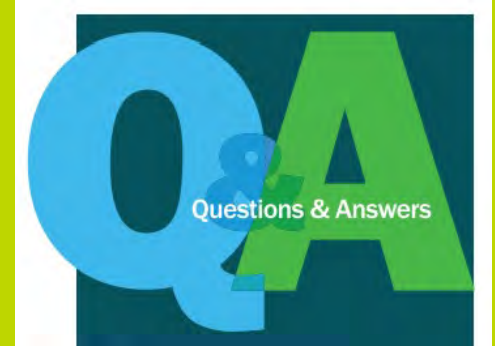


- Male student (Student A) sent email to teacher that another male student (Student B) had inappropriately touched him many times during P.E. In the email, Student A reported that he had been crying and having trouble sleeping for days. Teacher sent email to principal. Student A's parents requested a meeting with principal.
- Principal talked with Student B who neither confirmed nor denied touching Student A. Principal wrote in Student B's discipline file that he talked with Student B's parents who were supportive, but they were out of town on vacation. District records do not indicate that the district took any additional measures, including offering interim measures to Student A.
- Was the district deliberately indifferent?

# July 2021 Title IX guidance

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“A school should never assume a complainant of sexual harassment is lying or that the alleged harassment did not occur . . . [T]he presumption [of innocence] is designed to ensure that investigators and decision-makers serve impartially and do not prejudge that the respondent is responsible for the alleged harassment, [not to] decline services to a complainant or to make assumptions about a complainant’s credibility.” (Q36)



# Responding to Allegations of Sexual Harassment

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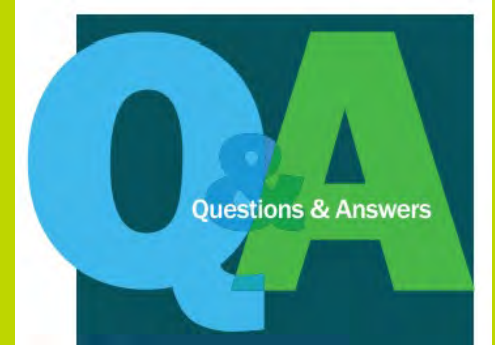
## Overview of select general requirements for the grievance process

- Designate reasonably prompt time-frames for resolution and range of possible disciplinary actions.
- Use either “preponderance of the evidence” or “clear and convincing” standard and apply it equally to employee and student complaints.
- Provide complainant and respondent (and their parents/guardians) an equal opportunity to review any evidence obtained that is directly related to the allegations raised in a formal complaint.
- Address certain other procedural steps enumerated at 34 C.F.R. § 106.45 of the 2020 regulations, many of which are addressed in this professional development.

# July 2021 Title IX guidance

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“The preamble explains that the preponderance-of-the-evidence standard means the decision-maker must determine whether alleged facts are more likely than not to be true. It also explains that the clear-and-convincing-evidence standard means the decision-maker must determine whether it is ‘highly probable’ that the alleged facts are true.” (Q56)



# TRUE/FALSE POLL

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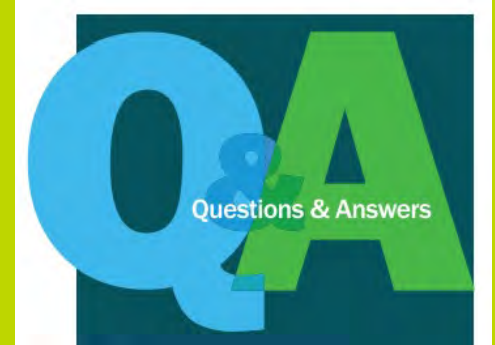


District may use different evidentiary standards for employees and students.

# July 2021 Title IX guidance

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“The preamble explains that if a school has a collective bargaining agreement in place that requires the school to use the clear-and-convincing standard for sexual harassment investigations involving employees, it is required under the 2020 amendments to use only the clear-and-convincing standard for sexual harassment investigations involving students as well. In those cases, the preamble indicates that the school may work cooperatively with its employee unions to renegotiate the standard of proof used in employee sexual harassment investigations.” (Q57)





# Responding to Allegations of Sexual Harassment

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## Revisiting the basic steps outlined in the 2020 regulations

1. District or school receives actual knowledge of conduct that may constitute sexual harassment.
2. District-level or school-based Title IX Coordinator meets with alleged victim to discuss supportive measures and the process for filing a formal complaint.
3. Investigator leads investigation of the formal complaint and ensures that written notice is given to involved individuals and their parents/guardians. Investigator gathers and reviews evidence, allows responses to evidence, and prepares investigative report; involved individuals and their parents/guardians review and respond to report.
4. Decision-maker provides opportunity for involved individuals and their parents/guardians to prepare written questions to be answered by other side. Decision-maker reviews all materials and makes written responsibility determination – an impartial determination as to whether alleged conduct occurred – including sanctions.

# Meeting to Offer Supportive Measures

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- A district's Title IX responsibilities are triggered once it is put on notice of alleged sexual harassment (i.e., actual knowledge). School-based Title IX Coordinator must “promptly” contact the alleged victim and his/her parents/guardians to discuss availability of supportive measures and consider parents/guardians input regarding supportive measures.
- Grievance policy must describe range of available supportive measures. Examples include:
  - Counseling;
  - Extensions of deadlines or other course-related adjustments;
  - Changes to class schedules; and
  - Increased monitoring/security of certain areas.
- District must inform alleged victim and parents/guardians that supportive measures are available with or without filing of formal complaint and must explain the process for filing a formal complaint.

# Formal Complaint to Initiate Grievance Process

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- No investigation of alleged sexual harassment may occur until after formal complaint has been filed.
- Formal complaint must be filed by alleged victim or parent/guardian. Complaint must describe sexual harassment allegations and request that district investigate.
  - Formal complaint may be filed at any time as long as alleged victim is “participating in or attempting to participate in the education program or activity” of district at time of filing.
  - District should create a standard formal complaint form.
- School-based Title IX Coordinator may initiate formal complaint and investigation if decision to initiate formal complaint is not clearly unreasonable under the known circumstances (e.g., alleged perpetrator may pose an ongoing safety threat).

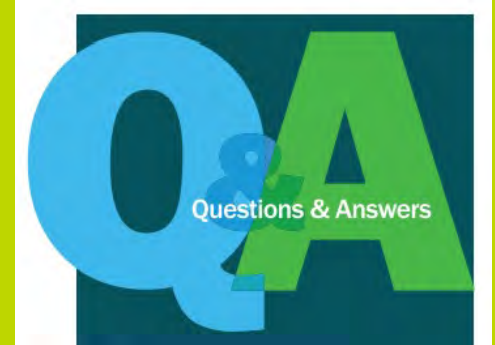
# July 2021 Title IX Guidance

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“The preamble gives several examples of situations of a complainant ‘attempting to participate’ in a school’s education program, including when a complainant:

1. Has withdrawn from the school due to alleged sexual harassment and expresses a desire to re-enroll if the school responds appropriately to the allegations,
2. Has graduated but intends to apply to a new program or intends to participate in alumni programs and activities,
3. Is on a leave of absence and is still enrolled as a student or intends to re-apply after the leave of absence, or
4. Has applied for admission.

It is important to keep in mind that this requirement concerns a complainant’s status at the time formal complaint is filed and is not affected by a complainant’s later decision to remain or leave the school.” (Q23)

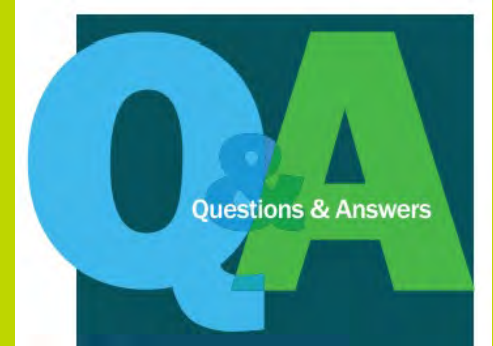


# July 2021 Title IX Guidance

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“In some cases, a school may be in violation of Title IX if the Title IX Coordinator does not [file a formal complaint]. For example, the preamble explains that if a school ‘has actual knowledge of a pattern of alleged sexual harassment by a perpetrator in a position of authority,’ OCR may find the school to be deliberately indifferent (i.e., to have acted in a clearly unreasonable way) if the school’s Title IX Coordinator does not sign a formal complaint, ‘even if the complainant . . . does not wish to file a formal complaint or participate in a grievance process.’”

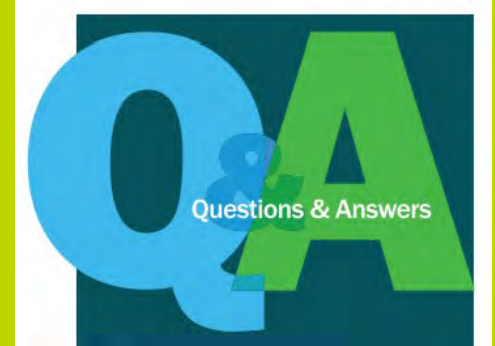
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# July 2021 Title IX Guidance

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“Put simply, there are circumstances when a Title IX Coordinator may need to sign a formal complaint that obligates the school to initiate an investigation regardless of the complainant’s relationship with the school or interest in participating in the Title IX grievance process. This is because the school has a Title IX obligation to provide all students, not just the complainant, with an educational environment that does not discriminate based on sex.” (Q24)



# YES/NO POLL

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A high school student stopped going to Calculus class, and as a result failed the class and did not graduate. After the school year was over, the student says she failed Calculus because she was sexually assaulted by another student in Calculus class.

**Continue with  
the grievance  
process?**

# YES/NO POLL

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A teacher tells the principal that Student A tells “raunchy” jokes in her social studies class day after day and will not stop despite repeated requests by the teacher. Teacher says that many students have told her they are very uncomfortable with jokes, but none of the students want to file a complaint. Teacher also says that she does not want to file a complaint because Student A’s parents have been difficult to deal with when she has reported problems with Student A’s behavior.

**Continue with  
the grievance  
process?**



# YES/NO POLL

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An anonymous complaint is filed alleging that student Mary Smith frequently calls several sophomores who have come out as being gay derogatory names.

**Continue with  
the grievance  
process?**

# YES/NO POLL

---

A 4<sup>th</sup> grader reports to his parents that a teacher's aide hugs him every day in class and says the he has told the aide to stop hugging him. Student is embarrassed and his parents/guardians do not want to file a formal complaint.

**Continue with  
the grievance  
process?**

# Response checklist revisited

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- Incident-specific response:
  - Complainant(s) and parents
  - Respondent(s) and parents
  - Staff
- School-wide response:
  - Students
  - Staff
  - Parents



The nature of these steps will depend on the ages/status of the victim(s) and perpetrator(s), and the context of the harassment.

# Grievance Process after Formal Complaint Filed

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- What are the basic parts of the grievance process after a formal complaint is filed?
  - Notice
  - Investigation
  - Written questions and answers
  - Responsibility determination
  - Appeal
- District must set reasonably prompt timeframes for carrying out grievance process.

# Grievance Procedures — Hypothetical

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- A district has four different Title IX policies and grievance procedures for resolving complaints of discrimination based on sex — one for resolving Title IX complaints for certified and non-certified employees, one for reporting suspected abuse or neglect of children or sexual assault of students by school employees, one for reporting 504, Title IX and Title VII claims and one included in its non- discrimination policy for claiming discrimination.
- A high school student wants to file a complaint against another high school student claiming sexual harassment and asks his principal what complaint form he should file and what the process is. The principal was not able to identify the form the student should complete and the procedures that would be followed.
- **Yes/No:** The district is in compliance with Title IX.

# Notice

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- Once a formal complaint is filed, district must provide to known involved individuals, including parents/guardians:
  - Written notice of sexual harassment allegations in sufficient detail by including identities of involved individuals (if known), conduct allegedly constituting sexual harassment, and date and location of incident (if known) and
  - A copy of grievance policy.
- The written notice also must:
  - Include statement that respondent is presumed not responsible for alleged conduct and that determination regarding responsibility is made at conclusion of grievance process.
    - Generally, no disciplinary action may be taken against respondent until after grievance process is carried out. Grievance policy must describe range of possible sanctions or remedies.
  - Inform involved individuals that they may have advisor of their choice and may inspect and review evidence.
  - Inform involved individuals of any code of conduct provision that prohibits knowingly making false statements or knowingly submitting false information during grievance process.

# Investigation and Investigation Report

# Investigation

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## General requirements to remember

- District must ensure that it has burden of proof and burden of gathering evidence sufficient to reach responsibility determination; burdens do not belong to the involved individuals.
- District must not restrict ability of involved individuals to discuss allegations under investigation or gather and present relevant evidence.
- District must ensure that thorough and fair investigation is done and that investigation report is written.



# Responsibilities of Investigators

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- Provide an equal opportunity for involved individuals to present witnesses (including fact and expert witnesses) and other inculpatory and exculpatory evidence. Privilege considerations apply.
- Provide an equal opportunity to involved individuals and their parents/guardians to inspect and review evidence and respond prior to completing investigative report.
- Draft investigative report that fairly summarizes relevant evidence and share report and evidence with complainant and respondent and their parents/guardians for review and response.

# Investigation — Hypothetical 1

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- A district had three reports of employee-involved sexual harassment and 20 reports of student-involved sexual harassment during a school year. The superintendent asked the Title IX Coordinator to provide her with investigation reports. Title IX Coordinator provided superintendent with four investigation reports that summarized investigation steps and findings. For nine of the reports, the Title IX Coordinator provided superintendent a log from PowerSchool that included the incident's date, location, description and outcome. For the other three reports, the Title IX Coordinator provided superintendent a discipline log.
- **Yes/No:** The district is in compliance with Title IX.

## Investigation — Hypothetical 2

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- Superintendent of a district reviewed Title IX investigation reports for previous school year. Superintendent found that most of the reports focused on respondents, such as how incident was addressed with respondent, how respondent responded to the allegations and what disciplinary consequences were for respondent. The reports included little discussion of any interim or remedial measures provided to the complainant. In addition, superintendent found some instances of repeat respondents.
- **Yes/No:** The district is in compliance with Title IX.

# Investigation: Step #1

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**Review applicable statutes, regulations, and school district policies and procedures. Follow all applicable policies and procedures during investigation.**

- As Investigator, first step is to review district's sexual harassment policies and procedures, which should incorporate the Title IX and state law requirements. Follow policies and procedures throughout your investigation!



## Investigation: Step #2

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### **Ask the complainant or staff member to provide narrative of facts to supplement the information provided in complaint.**

- Investigator should double-check to ensure that complainant has provided all relevant information, such as:
  - Who, what, when, where;
  - Race, ethnicity, and gender of victim;
  - Students, teachers, or other staff involved;
  - Witnesses to the incident; and
  - The specific nature of the alleged sexual harassment.
- Investigator should review complainant's responses before conducting any further interviews.



# Investigation: Step #3

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- The Investigator should discuss with the complainant and parent/guardians what interim measure are available and what interim measures would be helpful to the complainant while investigation is being conducted.
- Examples of interim measures are:
  - counseling
  - additional time for assignment
  - reschedule test
  - Schedule change



# Investigation: Step #4

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## **Review student/staff files of individuals allegedly involved in the incident.**

- Reviewing the files will provide the Investigator with key background facts that can inform his or her questioning of the victim, the alleged perpetrator, and witnesses.
- In reviewing files, note whether complainant or respondent has been involved in other incidents of alleged sexual harassment and the results of previous investigation.



# Investigation: Step #5

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## **Interview all alleged complainants.**

- Interview complainant(s) separately.
- Provide interviewees – whether they are complainant, a witness, or alleged perpetrator – with appropriate translation services if the interviewee is an English Learner.
- Consider asking the complainant(s) the following questions:
  - What happened? What happened next?
  - When and where did the incident happen?
  - How did you react to the harassment?
  - How has the alleged harassment affected you and your experience at school?
  - Are there any other students, teachers, or staff who witnessed incident or who might have relevant information?
  - Do you have any notes, emails, text messages, social media posts, photographs, documents or other physical evidence related to the incident?
  - How would you like to see this situation resolved?





# Investigation: Step #6

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## **Interview other witnesses individually.**

- Interview all potential witnesses, even if first few witnesses interviewed provided identical information.
- Explain briefly the reasons for the interview and ask whether the witness has any relevant information about the alleged incident.
- Examples of questions:
  - Where and when did the incident occur?
  - What did you see?
  - Who else observed the incident?
  - What, if anything, did complainant or respondent tell you about the incident?
  - Do you know of anyone else who might have witnessed incident or who might have relevant information, such as emails, texts, photographs or social media posts?
  - Are you aware whether alleged respondent has engaged in similar conduct in the past?



# Investigation: Step #7

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## **Interview alleged perpetrator(s).**

- Conduct separate interviews with each of alleged perpetrators.
- Inform alleged perpetrator(s) of allegations.
- Ask alleged perpetrator(s) about basic facts surrounding the incident and give alleged perpetrator(s) explain what happened.



# Investigation: Step #8

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## **Review the notes from the interviews.**

- Follow up on any factual inconsistencies. Re-interview complainant, respondent and witnesses, as necessary.
- If alleged perpetrator says something that directly contradicts what complainant reported to you, circle back with complainant to clarify complainant version of what happened.



# Investigation: Step #9

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## **Provide complainant and perpetrator opportunity to review evidence.**

- Any evidence obtained as part of investigation that is directly related to the allegations raised in the formal complaint must be made available to each party in electronic or hard copy form.
- Investigator must allow the parties 10 days to submit a written response to the evidence, and Investigator must consider responses prior to completion of an investigation report.



# Investigation: Step #10

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## **Draft investigation report and share with complainant and perpetrator.**

- Investigation report must summarize relevant evidence.
- Investigative report must be sent to complainant, respondent and their parent/guardians in electronic or hard copy form for their review and written response. Parties must have at least 10 days to respond before continuing on with the grievance process.



# Possible Components of Investigation Report

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- Allegation(s)
- Policies/regulations related to allegation(s)
- Notice provided to complainant(s) and respondent(s)
- Background on complainant(s) and respondent(s)
- Interim measures provided to complainant
- Investigation process
  - Complainant(s) and respondent(s) interviewed
  - Witnesses interviewed
  - Documents reviewed
  - Other evidence reviewed
- Findings
- Recommendations, including remedies and disciplinary sanctions

# Written Questions and Answers

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- District must use written questions and answers as part of grievance process.
- Decision-maker must:
  - Allow complainant, respondent and their parents/guardians to submit written, relevant questions to ask other side (including witnesses) and
  - Explain any decision to exclude a question as irrelevant.
    - The alleged victim's prior sexual behavior is not relevant unless offered to prove that someone other than alleged perpetrator committed alleged conduct or to prove consent. Consent is not defined in the 2020 regulations.
  - Provide each side with answers to their questions.
  - Allow for additional, limited follow-up questions.

# Responsibility Determination

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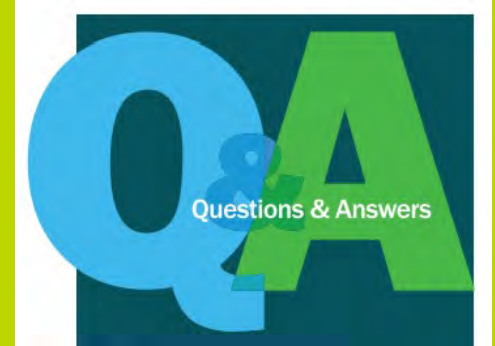
- District must use Decision-maker who is not same person as Title IX Coordinator or Investigator.
- Decision-maker must apply standard of evidence selected by the district – “preponderance of the evidence” or “clear and convincing standard” – to reach determination as to whether alleged conduct occurred.
- Decision-maker must issue a written determination that:
  - Identifies the allegations;
  - Describes the procedural steps taken by district;
  - Explains responsibility determination, including findings of fact, disciplinary sanctions, applicability of code of conduct, and remedies; and
  - Outlines appeal procedures.



# ED Title IX guidance (July 2021)

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“When a school finds a respondent responsible for sexual harassment under its Title IX grievance process, the school must provide remedies to the complainant that are ‘designed to restore or preserve equal access to the [school’s] education program or activity.’ These remedies may include the same individualized services that the school provided to the complainant as supportive measures, additional services, or different services.” (Q21)



# Appeal

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- District must provide for appeal of responsibility determination or dismissal of formal complaint if an involved individual or his or her parents/guardians asserts that:
  - A procedural irregularity affected the outcome;
  - New evidence may affect outcome and was not previously reasonably available; or
  - Title IX Coordinator, Investigator, or Decision-maker had conflict of interest or bias that affected outcome.
- Decision-maker on appeal may not be initial Decision-maker, Investigator or Title IX Coordinator.

# Dismissal of Formal Complaint

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- District must dismiss formal complaint for purposes of Title IX sexual harassment under certain circumstances, including:
  - Alleged conduct, even if true, would not constitute sexual harassment;
  - Alleged conduct, even if true, did not occur in district's education program or activity; and
  - Alleged conduct, even if true, did not occur against a person in United States.
- District has discretion to dismiss formal complaint during grievance process under certain circumstances, including:
  - Alleged perpetrator is no longer enrolled or no longer employed by district;
  - Alleged victim and his or her parents/guardians notifies Title IX Coordinator in writing that formal complaint or any allegations in complaint are withdrawn; and
  - Specific circumstances prevent district from gathering evidence sufficient to reach determination regarding formal complaint or allegations in complaint.

# TRUE/FALSE POLL

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Supportive measures must be offered to an alleged victim, even if a formal complaint is never filed.

# TRUE/FALSE POLL

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The Title IX Coordinator  
may also be the  
Investigator.

# TRUE/FALSE POLL

---



A district can decide whether it wants to offer an appeal process.

# TRUE/FALSE POLL

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In some circumstances, districts have discretion regarding whether to dismiss a formal complaint.

# Professional Development Requirements

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- District must provide professional development to individuals designated as Title IX Coordinator, Investigator, Decision-maker, or Facilitator of informal resolution process.
- District must make training materials publicly available on district website.
- As best practice, district should provide professional development to other employees who are not part of the core Title IX team.



# Professional Development Requirements

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- Required professional development topics for individuals designated as a Title IX Coordinator, Investigator, Decision-maker, or Facilitator of informal resolution process include:
  - Definition of sexual harassment;
  - Scope of the school district's education program or activity;
  - Process for conducting investigation and grievance process;
  - Requirements for how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias: and
  - Process for determinations, both for questions and evidence, and for information to be included in investigative report.

# Recordkeeping Requirements

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District must maintain certain records for seven-year period. Examples of required recordkeeping include:

- Investigation, appeal, and informal resolution records;
- Records of any actions – including any supportive measures – taken in response to a report of formal complaint of sexual harassment; and
  - Among other things, the school must document why its response was not deliberately indifferent or “clearly unreasonable in light of the known facts.”
- Records of professional development materials.

# Emergency Removal and Administrative Leave

---

Generally, district may not sanction alleged perpetrator until after grievance process is carried out. However, regulations provide exceptions for emergency removal and administrative leave under certain circumstances and in compliance with disability laws.

- Emergency removal may occur if district has (1) undertaken individualized safety and risk analysis; (2) determined that immediate threat to the physical health or safety of a student or other individual arising from the allegations justifies removal; and (3) provided alleged perpetrator with notice and an opportunity to challenge the decision immediately following removal.
- District may place employee on administrative leave for duration of the grievance process without having to follow emergency removal criteria outlined above

# Informal Resolution Process

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Though not required, district may offer informal resolution process to involved individuals and their parents/guardians after formal complaint has been filed.

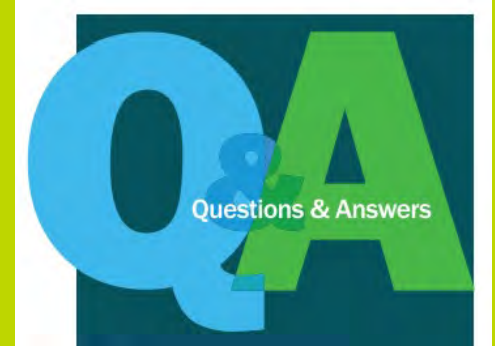
- Informal resolution cannot be offered if alleged perpetrator is employee;
- District must develop and share procedures for informal resolution;
- District must obtain voluntary, written consent from involved individuals and their parents/guardians to participate in informal resolution after sharing:
  - Allegations;
  - Requirements of informal resolution process and
  - Any consequences resulting from participation in informal resolution process (e.g., records that will be maintained or could be shared).
- Anyone may withdraw from informal resolution process and resume grievance process with respect to the formal complaint.

# July 2021 Title IX guidance

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“The 2020 amendments explain that they leave the term ‘informal process undefined to allow a school the discretion to adopt whatever process best serves the needs of its community. The amendments do not require that the parties interact directly with each other as part of an informal resolution process; mediations are often conducted with the parties in separate rooms and the mediator conversing with each party separately.”

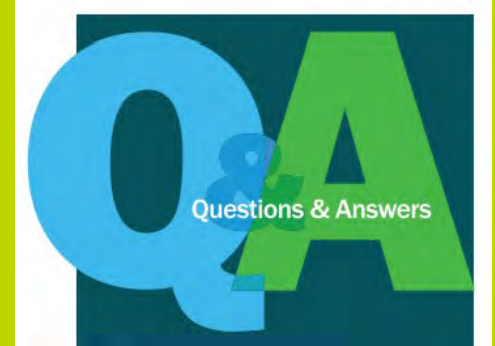
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# July 2021 Title IX guidance

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“The parties’ participation in mediation or restorative justice, if offered, should remain a decision for each individual party to make in a particular case, and neither party should be pressured to participate in the process. Schools may exercise discretion to make fact-specific determinations about whether to offer informal resolution in response to a complaint. The Department will not require the parties to attempt mediation in its enforcement of Title IX.”  
(Q58)



# Other aspects of the 2020 regulations

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- 2020 regulations contain provisions prohibiting retaliation.
- District may consolidate formal complaints where sexual harassment allegations arise out of same facts and circumstances.
- Hearings are discretionary. A district “retain[s] discretion to decide how to conduct hearings if [it] selects that option” as long as hearing rules apply equally to both sides.

# Sexual Harassment Regulations: Relation to Other Laws

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- District may not restrict rights protected under U.S. Constitution, including the First, Fifth, and Fourteenth Amendments.
- 2020 regulations set minimum requirements for Title IX compliance. State and local law may prescribe additional responsibilities related to a district's response to sexual harassment allegations. In cases of conflict, however, 2020 regulations preempt state and local law.
- When employees are involved in alleged sexual harassment, district may need to consider its obligations under both Title IX and Title VII.
- Districts still must respond to complaints of sex discrimination that do not meet the definition of “sexual harassment.”

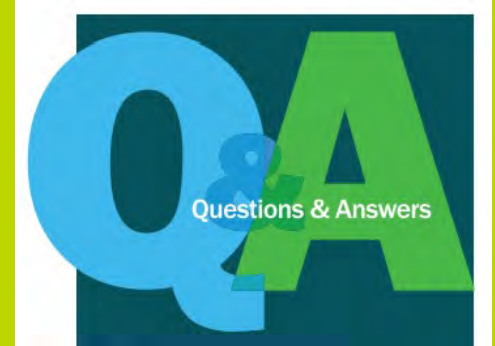




# July 2021 Title IX guidance

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“The 2020 amendments explain that the grievance process required for formal sexual harassment complaints does not apply to complaints alleging discrimination based on pregnancy, different treatment based on sex, or other forms of sex discrimination. Instead, the 2020 amendments state that schools must respond to these complaints using the ‘prompt and equitable’ grievance procedures that schools have been required to adopt and publish since 1975, when the original Title IX regulations were issued.”  
(Q64)



# July 2021 Title IX guidance

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With respect to a prompt and equitable grievance procedure, “OCR has historically looked to whether and how schools have communicated information about their procedures, including where to file complaints, to students, parents/caregivers (for elementary and secondary school students), and employees. In addition, OCR has considered whether the procedures have provided for adequate, reliable, and impartial investigation of complaints; designated and reasonably prompt time frames for the complaint and resolution process; and notice to the parties of the outcome of a complaint.”

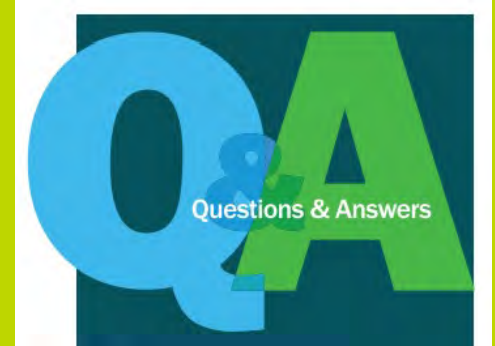
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# July 2021 Title IX guidance

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“OCR also has historically explained that a grievance procedure cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. Thus, the procedures should be written in language appropriate to the age of the school’s students, easily understood, and widely disseminated.”  
(Q65)



# Examples of OCR Voluntary Resolutions

# New London Public Schools OCR Resolution Agreement

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- Voluntary Resolution Agreement – October 17, 2023
- OCR initiated Title IX compliance review on March 12, 2022, which resulted in findings and concerns.
- Findings
  - Did not ensure adequate Title IX coordination and oversight
  - Did not adopt and publish grievance procedures in compliance with Title IX
  - Did not respond equitable to complaints of employee-involved sexual harassment
- Concerns
  - May not have had compliant recordkeeping practices for complaints
  - May not have responded equitable to complaints of student-involved sexual harassment

# New London Public Schools OCR Resolution Agreement (Continued)

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- Compliance review resulted in resolution agreement. Resolution agreement identified steps to address findings and concerns. Their steps include:
  - Revising Title IX grievance procedures;
  - Making modifications to recordkeeping procedures;
  - Developing written description of Title IX Coordinator(s) responsibilities;
  - Providing annual training for all District administrators and staff, including dedicated training for Title IX Coordinator(s), investigator(s), decision-maker(s) and any person who facilitates informal resolution process;
  - Administering a climate survey to secondary students to assess presence and effect of sexual harassment, students' understanding of how to report sexual harassment and suggestions for improving school climate; and
  - Developing a plan to address issues and concerns identified by climate survey.

# Alpine School District Resolution Agreement

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- Voluntary Resolution Agreement – September 20, 2023
- OCR initiated Title IX compliance review, which resulted in findings and concerns.
- Findings
  - Failed to coordinate efforts to comply with and carry out responsibilities when responding to sexual harassment and assault through designated Title IX coordinator
  - Failed to training adequately Title IX coordinator to carry out responsibilities
  - Failed to adopt grievance procedures that provided for equitable resolution of complaints and adequate, reliable and impartial investigations
  - Failed to take appropriate steps to investigate complaints of sexual assault
  - Failed to to provide interim measures to students who allegedly were assaulted
  - Failed to take effective steps in response to substantiated sexual assault to prevent recurrence, eliminate hostile environment and remedy its effects
  - Failed consistently to notify complainants and their parents/guardians of outcomes or investigations of reported assaults

# Alpine School District Resolution Agreement (continued)

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- **Concerns**

- May have failed to respond equitable to off-campus sexual harassment that created hostile environment for students in school
- May have failed to create or maintain sufficient records of responses to complaints and reports of sexual harassment
- Did not provide adequate training for employees responsible for ensuring compliance with Title IX about how to respond promptly and equitable and how to investigate and resolve complaints



# Alpine School District Resolution Agreement (continued)

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- Compliance review resulted in resolution agreement. Resolution agreement identified steps to address findings and concerns. These steps include:
  - Ensure that Title IX Coordinator coordinates all District’s efforts with Title IX;
  - Notify employees, students and parents of who Title IX Coordinator is and provide contact information;
  - Notify employees, students and parents that District does not discriminate based on sex and how to file complaints;
  - Revise policies and grievance procedures;
  - Provide training on revised policies and procedures;
  - Conduct climate survey(s) of students, parents and employees;
  - Develop recordkeeping system to document and preserve record and ensure accurate reporting;
  - Monitor reports and complaints; and
  - Review case files of reported incidents for previous two years.

# Tamalpais OCR Resolution Agreement

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- **U.S. Department of Education’s Office for Civil Rights Announces Resolution of Sex-Based Harassment Investigation of Tamalpais Union High School District**
- JUNE 24, 2022
- “The U.S. Department of Education’s Office for Civil Rights (OCR) today announced the resolution of a sex-based harassment investigation of the Tamalpais Union High School District in California.
- OCR determined that the district violated Title IX of the Education Amendments of 1972 and its implementing regulations by failing to respond promptly and effectively to repeated notice of ongoing sex-based harassment of a transgender student by another student, predicated on sex stereotyping.”
- OCR found that the district failed to investigate known allegations that the other student had repeatedly harassed the student about her appearance, her voice, her body, her name, and her pronouns since the start of the 2017-2018 school year. The ongoing harassment the student experienced over the course of months left her feeling unsafe on campus. OCR also found that the district failed to respond promptly or effectively to notice in spring 2018 that this harassment was continuing, and that the district’s investigation of a 2018 incident involving alleged sex-based harassment of the student was neither adequate nor equitable. As a result of these failures, OCR determined that the district permitted the student to be subjected to a hostile environment based on sex that was sufficiently serious to deny or limit the student’s ability to participate in or benefit from the school’s program.”

## Tamalpais OCR Resolution Agreement(continued)

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- “Today’s resolution with the Tamalpais Union High School District addresses harassment visited on a transgender student based on unlawful sex stereotyping over the course of a school year,” said Catherine E. Lhamon, Assistant Secretary for Civil Rights. “This resolution will not only address discrimination against this one student but also ensure other students will not suffer the recurring harassment she experienced at school.””
- The district’s commitments in the voluntary resolution agreement include:
- Offering to reimburse the student or her parent for past counseling and/or therapy services that the student received after the sex-based harassment began;
- Reviewing and revising, as necessary, its policies and procedures to clarify that harassment based on sex includes harassment based on sex stereotyping;
- Training its employees and contractors who respond to sex-based harassment about the Title IX obligation to respond promptly and equitably;
- Monitoring its schools’ responses to sex-based harassment complaints for compliance with the agreement and Title IX; and
- Providing documentation to OCR demonstrating that the district’s responses to complaints of sex-based harassment during academic years 2020-2021 and 2021-2022 complied with the agreement and Title IX.”

## Chino Valley OCR Resolution Agreement (continued)

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“The district’s commitments to resolve the investigation include:

- Contacting all former athletes from the school’s fall 2017 team and offering counseling services or reimbursement for such services received to address the effects of the district’s failure to address known sexual harassment on the team.
- Conducting a climate survey for the school’s athletics team.
- Training district and school administrators and interscholastic coaching staff about their responsibilities for responding effectively to sexual harassment.
- Conducting ongoing Title IX education for student athletes in the district’s athletics program to ensure that they know how to recognize and report sexual harassment. And,
- Reporting to OCR about the district’s training and responses to complaints of sexual harassment through the end of the 2022-2023 school year.”

## Chino Valley OCR Resolution Agreement

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### **U.S. Department of Education’s Office for Civil Rights Announces Resolution of Sexual Harassment Investigation of Chino Valley Unified School District in California**

- **APRIL 5, 2022**
- “The U.S. Department of Education’s Office for Civil Rights (OCR) today announced the resolution of a sexual harassment investigation of the Chino Valley Unified School District in San Bernardino County, California.
- OCR determined that the district violated Title IX of the Education Amendments of 1972 and its implementing regulations by failing to provide an effective response to notice of sexual harassment among members of a school athletics team in fall 2017.”

## Chino Valley OCR Resolution Agreement (continued)

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- “The office found that some team members subjected their fellow teammates to sexual harassment on the team bus, in the locker and weight rooms, and in the Athletics Physical Education classroom that was sufficiently serious so as to limit their ability to access the athletics program. OCR further found that this harassment created a hostile educational environment for team members who reported they were disgusted and shocked by the harassment, avoided the locker room and the team’s social media to avoid such harassment, sought counseling, and feared becoming the targets of harassment and considered leaving the school and team.
- The harassing conduct included videotaped assaults of teammates, students forcibly physically overpowering other students and sharing photos of their genitals among the team and on social media and placing their genitals on and near other students’ faces and bodies. Evidence reflected that the student harassers directed other students not to say anything about what happened to avoid getting in trouble.
- The response from school staff, including coaches, to these incidents was not reasonably calculated to end the harassing conduct or prevent its recurrence. Likewise, the district’s response following investigations reflected an inability to address adequately the conduct and a failure to consider interim supportive measures to protect student athletes from sexual harassment.”

## Tamalpais OCR Resolution Agreement(continued)

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- “OCR found that the district failed to investigate known allegations that the other student had repeatedly harassed the student about her appearance, her voice, her body, her name, and her pronouns since the start of the 2017-2018 school year.
- The ongoing harassment the student experienced over the course of months left her feeling unsafe on campus. OCR also found that the district failed to respond promptly or effectively to notice in spring 2018 that this harassment was continuing, and that the district’s investigation of a 2018 incident involving alleged sex-based harassment of the student was neither adequate nor equitable.
- As a result of these failures, OCR determined that the district permitted the student to be subjected to a hostile environment based on sex that was sufficiently serious to deny or limit the student’s ability to participate in or benefit from the school’s program.”

# Biden Administrations Proposed Regulations



# Ripped from the Headlines: Proposed Title IX Regulations

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## **Sweeping Title IX changes would shield trans students, abuse survivors**

The Biden administration's proposal would recognize that transgender students are covered by the law and undo rules devised during the Trump administration

By [Moriah Balingit](#) and [Nick Anderson](#), Washington Post, June 23, 2022

- “On the 50th anniversary of Title IX, the Biden administration proposed sweeping changes to the landmark law that would bar schools, colleges and universities from discriminating against transgender students, as the battle over transgender rights moves to the front lines of the culture war.
- The proposal would also amend the rules that govern how educational institutions investigate and resolve claims of sexual assault and sexual harassment. Over concerns that people were being wrongfully punished, President Donald Trump's education secretary, Betsy DeVos, revised the rules to make them more accommodating to the accused. Critics assailed the changes, saying they would discourage sexual assault survivors from coming forward to report assaults or harassment.”

# Proposed Title IX Regulations

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The U.S. Department of Education Releases Proposed Changes to Title IX Regulations, Invites Public Comment

**Department Commemorates 50 Years of Protecting and Advancing the Rights of All Students.**  
JUNE 23, 2022

- “The proposed regulations will advance Title IX's goal of ensuring that no person experiences sex discrimination, sex-based harassment, or sexual violence in education. As the Supreme Court wrote in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), it is "impossible to discriminate against a person" on the basis of sexual orientation or gender identity without "discriminating against that individual based on sex." The regulations will require that all students receive appropriate supports in accessing all aspects of education. They will strengthen protections for LGBTQI+ students who face discrimination based on sexual orientation or gender identity. And they will require that school procedures for complaints of sex discrimination, including sexual violence and other sex-based harassment, are fair to all involved. The proposed regulations also reaffirm the Department's core commitment to fundamental fairness for all parties, respect for freedom of speech and academic freedom, respect for complainants' autonomy, and clear legal obligations that enable robust enforcement of Title IX.”

## Proposed Title IX Regulations (continued)

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- “The proposed regulations would:
- Clearly protect students and employees from all forms of sex discrimination.
- Provide full protection from sex-based harassment.
- Protect the right of parents and guardians to support their elementary and secondary school children.
- Require schools to take prompt and effective action to end any sex discrimination in their education programs or activities – and to prevent its recurrence and remedy its effects.
- Protect students and employees who are pregnant or have pregnancy-related conditions.”

# Proposed Title IX Regulations (continued)

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- “Require schools to respond promptly to all complaints of sex discrimination with a fair and reliable process that includes trained, unbiased decisionmakers to evaluate the evidence.
- Require schools to provide supportive measures to students and employees affected by conduct that may constitute sex discrimination, including students who have brought complaints or been accused of sex-based harassment.
- Protect LGBTQI+ students from discrimination based on sexual orientation, gender identity, and sex characteristics.
- Clarify and confirm protection from retaliation for students, employees, and others who exercise their Title IX rights.”

# Proposed Title IX Regulations (continued)

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- “Improve the adaptability of the regulations' grievance procedure requirements so that all recipients can implement Title IX's promise of nondiscrimination fully and fairly in their educational environments.
- Ensure that schools share their nondiscrimination policies with all students, employees, and other participants in their education programs or activities.
- The Department will engage in a separate rulemaking to address Title IX's application to athletics.”

# Comments on Proposed Biden Administration Regulations

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## Proposed Federal Rules on Title IX Draw Flood of Public Comments

Protection for LGBTQ students a major focus in the rulemaking process

By Libby Stanford, Education Week, September 23, 2022

“The U.S. Department of Education received hundreds of thousands of comments related to its proposed overhaul of Title IX sex discrimination rules, exposing the divisive nature of the effort to explicitly protect LGBTQ students from bias among other contentious issues.

The Education Department released its proposed changes to Title IX regulations in June, making headlines for the decision to broaden the definition of sex-based harassment and discrimination to include gender identity and sexual orientation. The proposed rules had received 235,816 comments by its deadline on Sept. 12, according to regulations.gov, the website that allows members of the public to comment on policy. The proposed rule also provided new protections to pregnant and parenting students, broadened strict definitions of sexual harassment implemented by former U.S. Secretary of Education Betsy DeVos, and overturned Trump-era policies for the process of responding to sexual harassment, assault, and sex discrimination.”

# Connecticut Bullying/Harassment Laws

# Connecticut Law: Nondiscrimination in Public Schools

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- “The public schools shall be open to all children five years of age and over . . . and each such child shall have. . . **an equal opportunity to participate in the activities, programs and courses of study** offered in such public schools . . . without discrimination on account of race, color, **sex, gender identity or expression**, religion, national origin **or sexual orientation**. . . .”

-- Conn. Gen. Stat. § 10-15c



# Connecticut Law: Bullying Definition

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- Act that is direct or indirect and severe, persistent, or pervasive, which:
  - Causes physical or emotional harm to an individual;
  - Places an individual in reasonable fear of physical or emotional harm; or
  - Infringes on the rights or opportunities of an individual at school.
- “‘Bullying’ shall include, but need not be limited to, a written, oral or electronic communication or physical act or gesture based on any actual or perceived differentiating characteristic, such as **race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity or expression, socioeconomic status, academic status, physical appearance, or mental, physical, developmental or sensory disability**, or by association with an individual or group who has or is perceived to have one or more of such characteristics” (Conn. Gen. Stat. § 10-222d).
- A single act may be sufficient in some circumstances to constitute bullying.

# The universe of bullying & harassment

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# TRUE/FALSE POLL

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The bullying and harassment in Connecticut law is broader than under federal law.

# Hypothetical

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Cate, a high school student, sent topless photos of herself to her boyfriend, Rick, via Snapchat throughout their 3-month relationship, expecting the photos would automatically delete after 10 seconds. Rick took a screenshot of one of the photos. Following their break-up some weeks later, Rick texted the screenshot to his friends, who in turn posted sexually suggestive comments on Cate's social media pages and made similar comments at school, which affected Cate's attendance. When Cate shared this information with her guidance counselor, the counselor said there wasn't much he could do because the photos were taken voluntarily outside of school, and there is no evidence that the photos had been shown at school.

## Questions to consider:

- Is this sexual harassment under Title IX?
- Is this cyberbullying under Connecticut law?
  - “Cyberbullying” means “any act of bullying through the use of the Internet, interactive and digital technologies, cellular mobile telephone or other mobile electronic devices or any electronic communications” (Conn. Gen. Stat. § 10-222d)
- Was the school's (i.e., the guidance counselor's) response appropriate?
- What, if anything, could or should the school have done differently?

# Reconciling Title IX with State and Local Law

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## Takeaways:

- 2020 Title IX requirements apply only to alleged sexual harassment as defined in regulations. Connecticut requirements apply to a broader range of conduct.
- ED has indicated that if 2020 Title IX regulations conflict with state or local law, the federal regulations preempt such laws.
- Please consult legal counsel to ensure you understand the applicable requirements.

# Key Contact Information

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For complaints regarding bullying based on protected characteristics (such as race, gender, religion, and sexual orientation) and other acts of bias and discrimination, please contact:

Dr. Adrian R. Wood  
State Title IX Coordinator  
CT State Department of Education  
Turnaround Office  
450 Columbus Boulevard, Suite 602  
Hartford, CT 06103-1841  
Telephone: (860) 713-6795  
E-mail: [adrian.wood@ct.gov](mailto:adrian.wood@ct.gov)

Formal complaints based on protected characteristics may be directed to:

The Commission on Human Rights and Opportunities (CHRO)  
450 Columbus Boulevard, Suite 2  
Hartford, Connecticut 06103  
Telephone: 860-541-3400  
Toll Free (CT): 1-800-477-5737  
Web site: <http://www.state.ct.us/chro/>

# Agenda

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- ❑ Title IX Overview
- ❑ Title IX: Laws and Regulations
- ❑ 2020 Title IX Sexual Harassment Regulations and Guidance
- ❑ The Investigation and Investigation Report
- ❑ Recent Examples of OCR Voluntary Resolutions
- ❑ Biden Administration's Proposed Title IX Regulations
- ❑ Connecticut Bullying/Harassment Laws
- ❑ Q&A

# Questions?

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# YES/NO POLL

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Did you learn at least three new things as a result of this session?

**Understanding  
the Audience**

A photograph of a classroom. In the background, a large green chalkboard is visible. Below the chalkboard, a white ledge holds several orange folders or books. In the foreground, several wooden desks and metal chairs are arranged in rows, slightly out of focus. The lighting is bright, suggesting a well-lit classroom.

Maree Sneed

[maresneed@comcast.net](mailto:maresneed@comcast.net)