

The New Title IX Regulations, Sexual Harassment: What K-12 Educators Need to Know

Western Educational Equity Assistance
Center

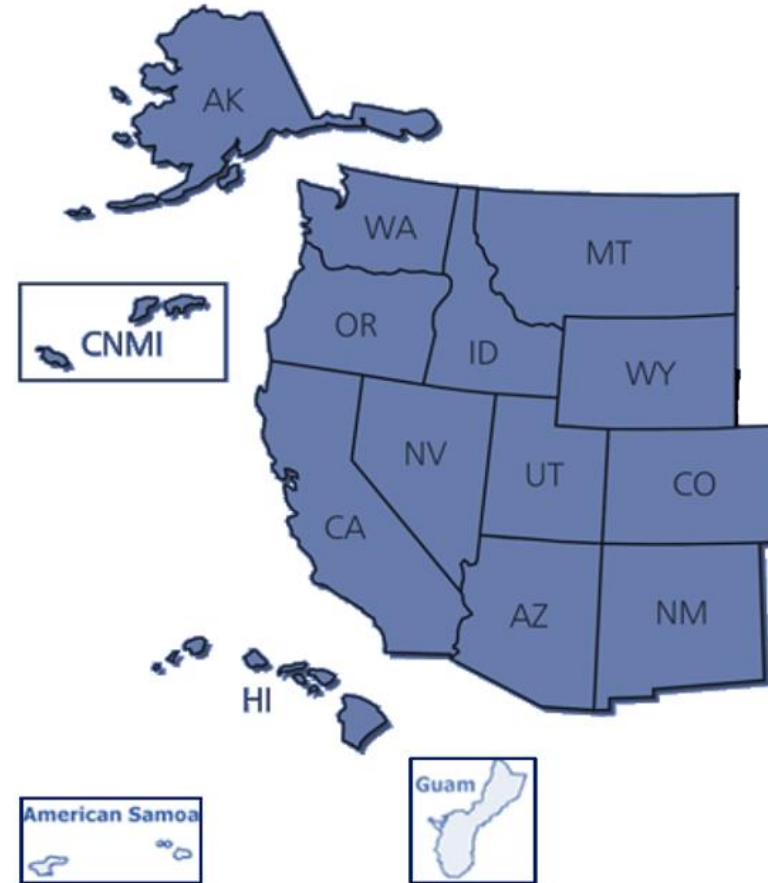
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What is the WEEAC?

- One of 4 equity assistance centers in the country.
- The WEEAC works with K-12 schools, school districts, and state education departments at their request.
- The WEEAC provide training and technical assistance on educational issues related to race, sex, national origin, and religion.



Session Disclaimer

- ⑨ Information provided is an overview of the changes to the Title IX Regulations released May 19, 2020 in the Federal Register that K-12 educators need to know concerning sexual harassment, sexual assault, sexual violence and dating violence,
- ⑨ This is not legal advice as the presenters are not lawyers and you should consult with your school district's legal counsel as to how your district plans to implement the regulations.

Goals

- ⑨ To know what Title IX covers,
- ⑨ To know what the changes to the 2020 Title IX regulations are for sexual harassment.



Title IX: 37 words

"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 educational program or activity receiving Federal financial assistance."



Title IX: The Law

- ⑨ Federal Civil Rights Law
- ⑨ New regulations compliance by August 14, 2020
- ⑨ ANY Federally funded education programs and activities
- ⑨ Prohibits discrimination on the basis of sex
- ⑨ Includes sexual harassment & sexual violence

What the Law Covers

⑨ Admissions

⑨ Financial Assistance

⑨ Student Housing

⑨ Employment Practices



What the Law Covers

⑨ Counseling

⑨ Access to Courses/Programs

⑨ Pregnant/Parenting Students

⑨ Athletics

⑨ Student Rules and Policies (discipline)

⑨ Sexual Harassment & Sexual Violence

** Title IX does pre-empt conflicting state laws

Why the Changes to Title IX

- ⑨ Clarify sexual harassment as a form of sex discrimination.
- ⑨ Ensure fairness in due process proceedings between both parties.
- ⑨ Require the school to offer survivors supportive measures, to ensure educational access for both parties.



New Sexual Harassment Definition: Quid Pro Quo

⑨ Quid pro quo harassment, A school employee conditioning education benefits on participation in unwelcome sexual conduct.

Summary of Major Provisions of the Department of Education's Title IX Final Rule and Comparison to the NPRM 5/2020

New Sexual Harassment Definition: **Hostile Environment**

- ⑨ Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or



New Sexual Harassment Definition

- ⑨ Sexual assault (as defined by Clery Act (34 CFR 668.46 (a)) including, dating violence, and domestic violence or stalking as defined in the Violence Against Women Act (VAWA).

Summary of Major Provisions of the Department of Education's Title IX Final Rule and Comparison to the NPRM 5/2020

Bullying Defined

- Bullying is defined as repeated and systematic abuse and harassment of another and others. A student is being bullied when he or she is exposed, repeatedly and over time, to negative actions on the part of one or more students.



- Olweus, D. (1993). Understanding children's world's: Bullying at school. UK: Blackwell Publishing

Sexual Harassment, Sexual Violence & Bullying

It is not about
Sexual
Attraction
It is about
POWER



Sexual Harassment & Bullying Behaviors

Sexual Harassment

- Physical unwanted, unwelcome physical contact of a sexual nature, touching, bumping, grabbing, or patting
 - Verbal sexually insulting remarks, rumors of a sexual nature
 - Non-Verbal gestures, notes, cartoons, looks
- Cyber harassment

Bullying

- Physical Getting another person to assault someone
 - Verbal Spreading Rumors
 - Non-Verbal Deliberate exclusion from a group or activity
- Cyber bullying

Where Does Title IX Apply?

Jurisdiction:

- ⑨ All programs and activities,
- ⑨ On and off campus,
- ⑨ Sponsored by educational agency.



Title IX applies to all

⑨ Complainant or a respondent

- ⑨ Students & Employees (from administrators on down)
- ⑨ Third-parties

⑨ Contractors

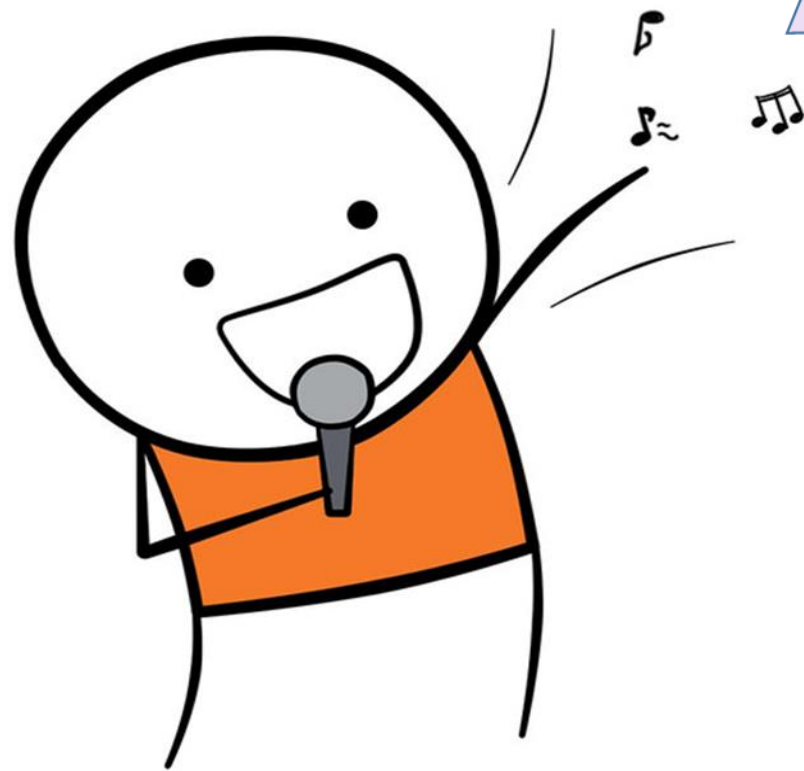
- ⑨ Vendors
- ⑨ Volunteers
- ⑨ Internship providers/mentors

MAKE THESE PARTIES AWARE OF
YOUR TITLE IX POLICY!

The New Regulations Require

- ⑨ Appointment of Responsible Person(s)
- ⑨ Self-Evaluation (good practice)
- ⑨ Notification of Non-Discrimination
- ⑨ Development of Policy
- ⑨ Grievance Procedure





Who is your
Title IX
Coordinator?

Poll Question

⑨ Do you know who is listed as your State and District Title IX Coordinator?

⑨ Yes

⑨ No



Title IX Coordinator

- ⑨ Designate an employee
- ⑨ Prominently post contact information, websites and student / parent handbooks, employment applications
- ⑨ Includes the Title IX Coordinator's name, e-mail, phone, office location
- ⑨ How to file a complaint even during non-working hours



Who To **Train** on the New Regulations



- Investigators
- Administrators & decision makers
- Counselors/Social Workers
- Teachers/Paras
- Students
- Support staff
- Transportation
- Food Service
- Custodial
- Volunteers and Vendors

Training Basics Content

- ⑨ Grievance policies and procedures(§106.45)
- ⑨ Filing a complaint
- ⑨ Formal and informal investigations
- ⑨ Specific training on sexual harassment,
- ⑨ Sexual assault, dating violence and domestic violence (as defined by the Clery Act)
- ⑨ Investigation process
- ⑨ Record keeping and report writing
- ⑨ Training materials need to be posted on websites



Title IX Coordinators Responsibilities During the Grievance Procedure

- ⑨ Coordinate supportive measures for both parties
- ⑨ Present both parties with the option for an informal resolution
- ⑨ Be informed about the new regulations guidance on the roles of the investigator and decisionmaker.
- ⑨ Facilitate training for the investigator and decisionmaker
- ⑨ Oversee the investigation process
- ⑨ Ensure that the Complainant and Respondent have advisors
- ⑨ Presume the Respondent is innocent
- ⑨ Present both parties the option to have a live hearing
- ⑨ Dismiss allegations that do not meet the definition of Sexual Harassment



A Grievance Policy Can Cover Many:

- ⑨ Sex (Title IX)
- ⑨ Race
- ⑨ National Origin
- ⑨ Religion
- ⑨ Disability
- ⑨ Age
- ⑨ Sexual Orientation
- ⑨ Harassment (race, gender, national origin, religion, disability)



Once you needed 1 now you need 2

- ⑨ 1 for complaints of sexual harassment that measure up to the new definitions including sexual assault, sexual violence, dating violence, and domestic violence,
- ⑨ 1 for all other areas of Title IX sex discrimination,
- ⑨ New ones need to be in place by August 14, 2020



Grievance Procedure Training

- ⑨ New definition of sexual harassment 106.30,
- ⑨ Scope of the educational programs and activities,
- ⑨ How to conduct an investigation, grievance process hearing, appeals, and informal resolution,
- ⑨ Documentation,
- ⑨ How to be impartial, avoid prejudgment of facts or people, avoid conflict of interest and to be unbiased,
- ⑨ To use technology in a live hearing.



Sexual Harassment Procedures

- ⑨ Training of TIX C, investigators, decision makers, (no conflict of interest),
- ⑨ Supportive measures,
- ⑨ How parties will be treated equitably,
- ⑨ Presumption of innocence,
- ⑨ Prompt timeframe,
- ⑨ Objective evaluation of evidence,
- ⑨ Possible sanctions, Standard of evidence used (preponderance of evidence or clear and convincing evidence)
- ⑨ Right to appeal,



Deliberate Indifference

- ⑨ A school must **respond promptly** to Title IX sexual harassment in a manner that is not **deliberately indifferent** § 106.44(a) *is evaluated by district's response to "actual knowledge" if sexual harassment with or without a formal complaint.*

Basic Procedural Rights

- ⑨ Prompt, equitable and unbiased,
- ⑨ Timelines,
- ⑨ Right to Representation (advisor & parent(s)),
- ⑨ Access to records,
- ⑨ Impartial decision makers (not the TIX C or investigators),
- ⑨ Right to appeal,
- ⑨ Confidentiality (not a guarantee, FERPA),
- ⑨ **Protections from harassment and retaliation**



Retaliation §106.71

Retaliation is specifically prohibited by the Final Rule

...may not intimidate, threaten, coerce, or discriminate against an individual for the purpose of interfering with their Title IX rights or because the individual filed a complaint, testified, participated, or refused to participate in a Title IX proceeding....

Initiation of a Grievance or Complaint

- ⑨ Actual Notice aka **Actual Knowledge**,
- ⑨ Once **signed** by the Title IX Coordinator,
- ⑨ Thorough, impartial and **unbiased**,
- ⑨ Shift from interim measures to **supportive measures** for both sides,
- ⑨ Need enough **evidence** to determine if there is a violation of the law occurred



Process Summary

- ⑨ Title IX C. receives complaint, **signs** complaint,
(assemble your investigation team)
- ⑨ **Inform** both parties & supportive measures,
- ⑨ Statement, respondent **not responsible** for alleged
conduct
- ⑨ Right to an **advisor**,
- ⑨ **False statements**,

Process Summary Continued: continued

- ⑨ Informal process option,
- ⑨ Opportunities to review evidence prior to completion of investigation (10 days),
- ⑨ Write report, send to each party,
- ⑨ Another 10 day review prior to determination (or hearing),
- ⑨ Determination &/or dismissal,
- ⑨ Right to appeal, and
- ⑨ Remedies



Written Reports and Determination

⑨ **Written Report** §106.45 (5)(vii)

⑨ **Determination** §106.45 (7)

⑨ Identification of allegations that constitute sexual harassment as defined by § 106.30,

⑨ Procedural steps, from filing complaint to determination,

⑨ Findings supporting determination,

⑨ Conclusions and statements of rationale for the determination of each allegation regarding responsibility,

⑨ How to file a appeal §106.45 (8)(i)

Provisions for Dismissal

- ⑨ Allegations did not constitute sexual harassment (using new definition),
- ⑨ Alleged conduct did not occur within the district's educational program or activity,
- ⑨ The conduct did not occur in the United States.



Appeals § 106.45(b)(8),

Must offer appeal process based on:

- ⑨ Procedural irregularities that affected the outcome,
- ⑨ New evidence not previously available,
- ⑨ Title IX Coordinator, investigator or decision maker had a conflict of interest or bias that affected the outcome

Informal Resolution § 106.45(b)(9),

- ⑨ Informal resolutions options may only be initiated after a formal complaint has been filed
- ⑨ Voluntary consent of both parties in writing
- ⑨ Can be withdrawn



Non-Compliance

- ⑨ A recipient is **NOT** in compliance with the requirements of Title IX if it does not have both a policy and a grievance procedure in place, regardless of whether or not discrimination has occurred.
- ⑨ We cannot stress the importance of having both up-to-date grievance procedures and policies of non-discrimination. Both of these must be widely publicized to students, parents, employees, community members and in manner and language they can understand.

Poll Question

⑨ With the new Title IX regulations going into effect on August 14, 2020, Which is the most important thing to do first?

1. Revisit and revise Policies and Procedures, get Board approval, and publish them.
2. Train Title IX Coordinators, Investigators, Decision-Makers, and Appeal Officers.
3. Train staff on how to implement the overhauled policies and procedures.
4. Post training materials.
5. Publish who the Title IX Coordinator is along with procedures for filing complaints.
6. Take interim steps to address all of the above.



Implementation at the Building Level

- ⑨ Train all adults (administrators, teachers, counselors, and support staff) on policies of non-discrimination, Title IX, sexual harassment policies and procedures
- ⑨ Train everyone including students on Title IX, sexual harassment, sexual assault, sexual violence, dating violence and domestic violence
- ⑨ Inform vendors and volunteers of your non-discrimination policy and Title IX sexual harassment policies and procedures.

Implementation at the Building Level

- ⑨ Inform students who they go to in your building to report incidents of harassment,
- ⑨ Inform teachers, staff, and student how to file a complaint,
- ⑨ Inform vendors and volunteers who the District Title IX Coordinator is and how to contact them.

Implementation at the Building Level

- ⑨ Inform every one about the process after a complaint has been filed so they can know what to expect
- ⑨ Inform everyone administrators, teachers, counselors, staff, students, vendors and volunteers who the Title IX Coordinator is and how to contact them.



Title IX Compliance Checklists

- ⑨ Checklist for Evaluating Policy
- ⑨ Checklist for Evaluating the Content of Grievance Procedures
- ⑨ Checklist for Conducting Formal Investigations
- ⑨ Checklist for Implementing Informal Resolutions

Checklist for Evaluating Policy

- ⑨ **Content of the New Title IX Policy**
- ⑨ **Dissemination of the New Title IX Policy**
- ⑨ **Training of Staff for Implementation of the New Title IX Policy**
- ⑨ **Implementation of the New Title IX Policy**
- ⑨ **Action Steps**



Checklist for Evaluating the Content of Grievance Procedures

- ⑨ **Initiation and Filing of a Complaint**
- ⑨ **Processing the Grievance**
- ⑨ **Procedural Rights: Post Determination and Appeals**

Checklist for Conducting Formal Investigations

- ⑨ Training of Investigators
- ⑨ Initiation of a Formal Investigation
- ⑨ Reporting Requirements
- ⑨ Retaining Documentation



Checklist for Implementing

⑨ **Appropriateness of the Informal Resolution Process**

⑨ **Requirements for Use of the Informal Resolution Process**

To Do Before August 14, 2020

- ⑨ Know the new regulations (over 500 pages)
<https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>
- ⑨ Train everyone!
- ⑨ Revise and update your policies and procedures,
- ⑨ Make all your training material available, post on website and seek permission if you did not develop the material used in training



References Used

Federal Register, vol 85, no. 97, Tuesday May 19, 2020, Rules and Regulations

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

Summary of major provisions of the Department of Education's Title IX Final Rule

ATIXA R3 Resources: New to IX? What Every K-12 Administrator Needs to Know

ATIXA R3 Resources: Summary of 2020 Title IX Regulations and Quick Tips

References Used

Regulations, May 11, 2020

Institutional Compliance Solutions, webinar New Title IX Regulations, May 12, 2020

Clery Act <https://www.govinfo.gov/content/pkg/FR-2014-10-20/pdf/2014-24284.pdf#page=33>

Clery Center <https://clerycenter.org/policy-resources/>

WEEAC Title IX PowerPoint

<https://www.congress.gov/116/bills/hr1585/BILLS-116hr1585pcs.pdf>

Violence Against Women Act 2019 Revised

<https://www.congress.gov/109/plaws/publ162/PLAW-109publ162.pdf>

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