



**BRADLEY F. KIDDER
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**TITLE IX SEXUAL HARASSMENT AND DISCRIMINATION:
WHAT YOU NEED TO KNOW**

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Title IX is a federal law administered by the United States Department of Education Office for Civil Rights (OCR). It protects people from discrimination based on sex in education programs or activities that receive federal funds. Title IX states:

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 protects everyone who interacts with a school from discrimination, including parents and guardians, students, and employees.

In August 2020, the United States Department of Education enacted new regulations implementing the statute. A Court recently vacated a provision of the regulations, related to what evidence a decision-maker could consider during a Title IX grievance procedure. Following that ruling, the Department of Education announced that it would no longer seek to enforce that provision of the Title IX regulations.

On August 6, 2021, the Department of Education announced a comprehensive review of the Title IX regulations. That review is ongoing, and the Department has not issued new regulations. The regulations that took effect in August 2020 are still in effect.

These materials cover the regulations that went into effect in August 2020.

What is Sexual Harassment

Sex-based conduct that satisfies one or more of the following:

- “Quid Pro Quo” harassment – **a school employee** offering a benefit in exchange for unwelcome sexual conduct;
- 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 school’s educational program or activity; and
- “Sexual assault,”¹ “dating violence,” “domestic violence,” or “stalking”² as those terms are defined in other federal laws.

¹ Defined in the Clery Act.

² Defined in the Violence Against Women Act.

Location of Sexual Harassment

- Title IX covers sexual harassment that happens in a school’s “education program or activity.”
- Can extend outside the school day or off school property if: the school exercises substantial control over the context of the alleged harassment and the person accused of committing the harassment.

What are the responsibilities of schools to address Title IX sex-based harassment?

When a school has actual knowledge of sexual harassment, it must respond promptly in a manner that is not deliberately indifferent. A school is deliberately indifferent if its response is clearly unreasonable in light of the known circumstances.

When Does a School have Actual Knowledge of Sexual Harassment?

- A school has actual knowledge of sexual harassment when it has notice that a person may have been the victim of sexual harassment;
- Any person, whether the alleged victim or a parent, friend, or bystander, may report sexual harassment and put the school on notice;
- If school personnel personally witness sexual harassment, the school is on notice;
- In elementary and secondary schools (K-12), if someone reports sexual harassment to ANY school employee, the school is on notice;
- Reports may be written or oral; or
- Once a school has actual knowledge of sexual harassment or allegations of sexual harassment, the school has an obligation to respond and take action.

What should employees do if they receive a report or witness sexual harassment?

Report it immediately to your organizations’ Title IX Coordinator.

What Does the Title IX Coordinator Do?

The Title IX Coordinator will follow the procedure set forth in the District’s policy, including providing information to the individual about:

- The availability of supportive measures;
- The right to file a complaint; and
- How to file a complaint.

Either the Title IX Coordinator or the Complainant can file a formal complaint. At the time a formal complaint is filed, a complainant must be participating or attempting to participate in the education program or activity of the school with which the formal complaint is filed.

Once a formal complaint is filed, the school must:

- Offer supportive measures to the respondent; and
- Follow the Title IX grievance procedure.

The school **MUST** follow the Title IX grievance procedure before imposing discipline on the respondent.

Supportive Measures

A school must offer supportive measures to the alleged victim:

- Regardless of whether a formal complaint is filed; and
- A school may offer supportive measures to the accused.

What are Supportive Measures?

- Free, individualized services designed to report or preserve equal access to education, protect safety, or deter sexual harassment;
- Supportive measures support a student, they are not punitive or disciplinary with respect to another student; and
- Supportive measures do not unreasonably burden another person.

Examples include:

- Counseling;
- Extensions of deadlines;
- Modifications of class schedules;
- Increased security or monitoring of parts of a facility; and
- Mutual restrictions on contact between individuals.

Implementing Supportive Measures

- The Title IX Coordinator is responsible for implementing supportive measures;
- Generally, the school must keep the supportive measures confidential; and
- The school must consider the alleged victim's wishes when considering and implementing supportive measures.

Prohibition of Retaliation

- No school or person may retaliate against anyone for exercising rights under Title IX;
- Any person retaliated against can file a complaint with the school;
- The school should keep the identity of the parties and the witnesses confidential unless disclosure is required under law or is necessary in order to conduct the grievance process; and
- The person retaliated against should file a complaint with the school.

Title IX Grievance Procedure

Schools should contact legal counsel if they need to follow the Title IX grievance process.

What are other features of the New Regulations?

- New recordkeeping requirements;
- New Title IX Coordinator training requirements;
- Due Process and Grievance Procedures; and
- Confirmation that OCR can never require a school to violate the First Amendment by suppressing free speech.

You can find more information about Title IX and the August 2020 regulations here:
<https://sites.ed.gov/titleix/policy/>.