

# Navigating Discrimination and Harassment Allegations & Investigations

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# Synopsis

- Title IX and Important Changes in 2024 Regulations
- Brief Over of Harassment/ Discrimination Law/ Policy
- The decision-making process: **what** is this complaint, and **how** to do I proceed?
- Examples
- Investigation tips

# Relevant Federal Laws

- Title VI: No person in the United States shall, **on the ground of race, color, or national origin**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- Title IX: "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: Changes to the Regulations 2024

- Text of Title IX did not change
- 34 CFR 106 changed: regulations implementing Title IX
- Updated definitions, process, and additional requirements

# Title IX: Definition of Prohibited Conduct

- Applies to *Sex-Based Harassment* (expanded scope of definition 34 CFR s. 106.2)
  1. Quid Pro-Quo Harassment
  - 2. Hostile Environment Harassment** – Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively **and** objectively offensive **and** is so severe **or** pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity.
  3. Specific Offenses – Sexual Assault, Dating Violence, Domestic Violence, Stalking

# Changes to 2024 Title IX Regulations

- ~~Unwelcome Conduct~~ Hostile Environment Harassment:
  - Unwelcome sex-based conduct ~~determined by a reasonable person to be~~ that, based on a totality of the circumstances, is subjectively and objectively offensive and is so severe, or pervasive, and ~~objectively offensive~~ that it effectively limits or denies a person's equal access to ability to participate in or benefit from the recipient's education program or activity.

# 2024 Title IX Regulations: Specific Protections

- Protect Pregnancy & related conditions
  - Must provide notice of resources/ Title IX Coordinator, reasonable accommodations, must provide space for lactation, cannot require unnecessary documentation.
  - Very specific requirements & limitations!
- Protect LGBTQI+ students, employees & others: prohibition of sex harassment based on sexual orientation, gender identity, sex characteristics. *Preventing someone from participating in school consistent with their gender identity is more than a de minimus harm.*

# 2024 Title IX Regulations: Process

- Must take "prompt and effective" action to end sex discrimination
- Process is Shorter than before:
  - Evaluation of Complaint (3 days)
  - Notices and Investigation (15 days)
  - Evidence organization/ summary by investigator (5 days)
  - Evidence review and response by parties (5 days)
  - Decisionmaker evidence evaluation and determination (10 days)
- Process must be fair/ transparent/ reliable – training is required.



# Changes to 2024 Title IX Regulations

- Assignment of Roles:
  - Title IX Coordinator (or designee): receive complaints pertaining to Title IX; initial evaluation, may be designated to investigate.
  - Title IX Coordinator (exclusive): must track and respond to barriers in reporting processes.
  - Investigator: May be done by the Coordinator's designee or decision-maker.
  - Decision-maker: Does not have to be separate from Investigator.
  - Appeals: Still must remain separate from initial process (best practice).



# Title IX Policy

- Provides key information on:
  - Definitions: updates to "sex-based harassment", investigation roles
  - Timelines/ Notifications (initial complaint 3 days, investigation 15 days)
  - Complaints: when to receive written complaint, reduce oral complaint to writing, consider informal resolution, when TIX Coordinator should file complaint
  - This is your guiding document for YOUR school district
  - Create a checklist based on your policy

# NH State Law: Discrimination in Public Schools

- RSA 354-A:27: Opportunity for Public Education Without Discrimination a Civil Right. No person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in public schools because of their **age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion or national origin. . "**

# Changes to NH Law: Public School Discrimination

- RSA 193:38: No person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in public schools because of their **age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or national origin**, all as defined in RSA 354-A. Any person claiming to be aggrieved by a discriminatory practice prohibited under this section, including the attorney general, may initiate a civil action against a school or school district in superior court for legal or equitable relief, or with the [NH] commission for human rights, as provided in RSA 354-A:27-28. **In this section, "race" means immutable traits associated with race, including hair texture and protective hairstyles and "protective hairstyles" means hairstyles or hair type, including braids, locs, tight coils or curls, cornrows, Bantu knots, Afros, twists, and headwraps.**

# NH Ed. Admin Rules

- 303.01: Each School Board Shall:
- (i) Adopt a rule to ensure that there shall be no unlawful discrimination **on the basis of sex, race, age, creed, color, marital status, national origin, or disability** in educational programs or activities consistent with local standards which may be stricter in specific areas than the broader statewide standards;
- (j): Establish a policy on sexual harassment, written in age appropriate language and published and available in written form to all those who must comply, which includes... [definition, processes, etc.]

# Harassment and Discrimination

- POLICY
  - "*Discrimination*" is conferring benefits upon, refusing or denying benefits to, or providing differential treatment to a person or class of persons in violation of law based on race, color, religion, sex, national origin, ancestry, disability, age, genetic information, or any other characteristic protected by law, or based on a belief that such a characteristic exists.
  - "*Harassment*" generally refers to the use of words or engaging in behaviors that annoy, threaten, intimidate, or demean a person without a legitimate purpose. Harassment will often constitute bullying prohibited under Board policy JICK . Additionally, harassment may constitute illegal discrimination if the harassing statements or behaviors include explicit or implicit reference to age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or national origin.

# Harassment and Discrimination

- POLICY

- "[T]he District prohibits any type of unlawful harassment or discrimination based on age, race, color, religion, creed, sex, national or ethnic origin, gender identity, sexual orientation, marital status, familial status, physical or mental disability, pregnancy, genetic information, or veteran status by employees, students, members of the school community, or by vendors or visitors on school property or at school-sponsored events. No person shall be excluded from or denied the benefits of educational programs or activities on the basis of any of the above."

# Policy Guidance

- Policies are designed to guide you through the process.
  - Nondiscrimination, Equal Opportunity Employment, and Anti-Discrimination
  - Discrimination and Harassment Grievance Procedure
  - Procedural Safeguards, Nondiscrimination on the Basis of a Disability
  - Accommodation of Pregnancy and Related Medical Conditions: Personnel & Students
  - Facilities or Services – Grievance Procedure (Section 504)
- When in doubt:
  - Call your Title IX Coordinator!
  - Consult your policies on Title IX/ Discrimination/ Harassment (they are required to be posted online)!



# Decision-Making Process

- Goal: help you identify the complaint and correct process to follow.
- Step 1: **Evaluate BEFORE you Investigate (even a little bit)**
- Step 2: Is it Title IX? If yes, follow the procedure in the new 2024 Regulations, unless the conduct occurred before the law changed, then look to 2020 regs.

# Decision-Making Process

- Step 3: Could it be sex-based discrimination or harassment under New Hampshire Law?
- Step 4: Could it be discrimination or harassment under Federal/ State law?
- *Not necessarily mutually exclusive! **Easiest place to start is Title IX.***

# Step 1: BEFORE YOU INVESTIGATE

- Start supportive measures.
  - Before you really know if the allegation has ANY merit, you might be thinking through this process and implementing preliminary supportive/ safety measures (if they are equally offered/ provided and do not amount to punishment).
- Decide what type of investigation you might follow
  - You cannot start a mini-investigation to get more information about the complaint if it is possibly Title IX!
  - Contact the Title IX Coordinator for guidance if there is any chance the allegations may allege a Title IX Violation.

## Step 2: Rule In or Out Title IX

- If you have any thought that perhaps the conduct might fall under Title IX, contact your Title IX Coordinator for assistance if any discrimination on the basis of sex is alleged..
- 34 CFR 106.44 (f)(2): "A Title IX Coordinator is not required to comply with [Title IX or these regs] upon being notified of conduct that may constitute sex discrimination if the Title IX Coordinator **reasonably determines** that the conduct as alleged could not constitute sex discrimination under Title IX or this part.
- *Decide: is it potentially Title IX, or can you **reasonably determine** that it is NOT, but is it otherwise an allegation of Harassment, Discrimination, or Sex-Based conduct under State Statute?*

## Steps 3-4: Evaluate for Discrimination/ Harassment Allegations

Consider whether the report or complaint includes issues related to sex discrimination, including sex-based harassment, or sexual violence, discrimination of students on the basis of educational disability, bullying or other harassment of pupils; or discrimination based upon protected classes relative to any of the District's food and nutrition services (FNS) programs.

If the report or complaint is of discrimination, harassment, or retaliation, that is not related to those issues specified above, it's likely those allegations should fall under AC and ACA.

# If it's not Discrimination...Don't forget...

- **Employee Handbook / Student Code of Conduct**
- **Bullying**: RSA 193-F: Pupil Safety and Violence Prevention
  - (a) "Bullying" means a single significant incident or a pattern of incidents involving a written, verbal, or electronic communication, or a physical act or gesture, or any combination thereof, directed at another pupil which:
    - (1) Physically harms a pupil or damages the pupil's property; (2) Causes emotional distress to a pupil;
    - (3) Interferes with a pupil's educational opportunities; (4) Creates a hostile educational environment; or
    - (5) Substantially disrupts the orderly operation of the school.
- **Restraint & Seclusion**: RSA 126-U: Limiting Use of Child Restraint Practices
  - IV. "Restraint" means bodily physical restriction, mechanical devices, or any device that immobilizes a person or restricts the freedom of movement of the torso, head, arms, or legs. It includes mechanical restraint, physical restraint, and medication restraint used to control behavior in an emergency or any involuntary medication. It is limited to actions taken by persons who are school or facility staff members, contractors, or otherwise under the control or direction of a school or facility.
  - Paperwork may still be required on file!

## EXAMPLE - 1

- 9th grade student is in the classroom alone with a science teacher for extra help. Student becomes upset and leaves to tell math teacher that she was alone with science teacher who made her feel uncomfortable. Student does not elaborate right away.
- ***What are your first steps?***

## EXAMPLE - 1

- Student is offered supportive measures, and after having a chance to calm down, elaborates that science teacher made a comment about her clothing being "too short and revealing"
- ***What is your next step?***



# Example 1

- Notes:
  - You need a lot more information, BUT: do not try to get it on your own! **Call the Title IX Coordinator!**
  - Title IX Coordinator will obtain the full complaint and evaluate to determine if the conduct could be sex-based harassment. ONLY the Title IX Coordinator should be making this determination.
  - No further investigation should happen by the school or administration before the Title IX Coordinator decides whether to conduct a Title IX investigation.

## Example - 2

- Student 1 is friends with Student 2.
- Student 1 becomes very close to Student 2.
- Student 2 complains that Student 1 is always bothering them, interrupting work, following them to the resource room.
- What is your first step?



## Example 2

- After speaking to the complaining student, you learn that Student 2 is upset because Student 1 touches their body a lot when they are talking.
- What is your next step?

## Example 2

- After asking for a few details and talking to the Title IX Coordinator, you determine that the touching, while unwelcome, would not constitute sexual assault or sex-based harassment, but that Student 2 has experienced significant emotional distress because of Student 1's actions.
- What is your next step?

## Example 2

- After considering whether the allegations amount to harassment and/or bullying, you decide to proceed with a bullying investigation.
- What is your timeline for the investigation?
- Would your analysis change if Students 1 or 2 were in a *protected class*?

# Investigation Tips

- Final thoughts:
  - Work through each step one at a time:
    - Is it Title IX
    - Is it Discrimination/ Harassment
    - Is it a violation of Other Board Policy? / Student Code of Conduct OR Employee Handbook?
    - Is it Bullying? Did a Restraint/ Seclusion reportable event occur?
  - Avoid potential bias in assignment of investigators.
  - Retaliation is always prohibited and should be noted consistently.
  - If reported, retaliation is investigated separately from the original complaint.

# Additional 2024 Title IX Reading Materials

- [FACT SHEET: U.S. Department of Education's 2024 Title IX Final Rule Overview](#)
- [Summary of Major Provisions of the Department of Education's Title IX Notice of Proposed Rulemaking \(PDF\)](#)
- [Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures under 2024 Amendments to the U.S. Department of Education's Title IX Regulations](#)
- [Title IX NFR - Unofficial version \(ed.gov\)](#)