



Title IX Updates

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Title IX Regulations Update: Background

- ▶ Takes effect August 14, 2020
- ▶ Meant to address increasing incidents of sexual misconduct
- ▶ Requires K-12 schools to make substantial changes to existing policies

Key Regulatory Changes

- ▶ Grievance Procedures
- ▶ Jurisdiction
- ▶ Notice to Institution / Notice to Parties
- ▶ Definition of Sexual Harassment
- ▶ Supportive Measures
- ▶ Informal Resolution
- ▶ Formal Investigation and Hearings
- ▶ Due Process Elements
- ▶ Substantial Documentation Requirements
- ▶ Significant Training Requirements

Staffing Requirements Under New Regulations

- ▶ New positions for investigators and decision makers
 - ▶ Decision maker cannot be the same as Title IX coordinator or an investigator
- ▶ May want to consider Title IX support staff to manage case load, if not already in place

Publication Requirements

- ▶ Contact information of Title IX Coordinator on website, and, if any, each handbook that it makes available, in addition to policy
 - ▶ telephone number
 - ▶ electronic mail address
 - ▶ office address
- ▶ Requires the District to publish its grievance procedures and process

Training Requirements

- ▶ Training for all Title IX Coordinators, investigators, decision-makers, and any person who facilitates the district's informal resolution process, if any
- ▶ Decision-maker specific training
- ▶ Investigator specific training

Title IX Liability

- ▶ For a district to be liable for a Title IX violation, it must, among other things, have actual knowledge of sexual harassment that occurred while engaged in an education program or activity.
- ▶ The definitions of all of the underlined key terms have been updated.

Actual knowledge

- ▶ Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, **or to any employee of an elementary and secondary school.**

Sexual Harassment

- ▶ Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - ▶ (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (**quid pro quo**);
 - ▶ (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 (**unwelcome conduct**); or
 - ▶ (3) Any conduct that qualifies as sexual assault, dating violence, domestic violence or stalking, as defined by federal law. (**Clery Act/VAWA offenses**)

Education program or activity

- ▶ Applies to ALL district operations & programs, whether they occur on or off school grounds.
- ▶ Includes locations, events, or circumstances over which the district exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

Responding to Reports of Sexual Harassment

- ▶ After receiving a report of sexual harassment, Title IX Coordinator must promptly contact the complainant to discuss “supportive measures” and explain the process for filing a formal complaint.
 - ▶ “supportive measures” may include counseling, contact restrictions, and/or modification of class schedules.
 - ▶ formal complaint not required to provide supportive measures
 - ▶ If formal complaint is filed, grievance process must be followed

Grievance Procedure Overview

- ▶ Notice to all known parties
- ▶ Investigation of allegations
- ▶ Prepare Investigative Report for parties to review and respond
- ▶ Written Questions by parties
- ▶ Optional Hearing (not required for K-12 schools)
- ▶ Written Determination
- ▶ Appeal

Grievance Process Requirements

- ▶ Treat all parties equitably
- ▶ Require an objective evaluation of all evidence
- ▶ Take proper steps to avoid and mitigate any conflicts of interest
- ▶ Take steps to provide requisite training
- ▶ Accused is presumed not responsible
- ▶ Provide deadlines and processes to allow for temporary delay of grievance process
- ▶ List all disciplinary sanctions and remedies
- ▶ Determine standard of evidence to be applied
- ▶ Provide appeals procedures
- ▶ Description of supportive measures
- ▶ Prohibition of privileged evidence

Key Takeaways

- ▶ Make sure you have the proper staffing
- ▶ Conduct the appropriate training
- ▶ Be aware of any conflicts of interest
- ▶ Be mindful of other statutes at play (FERPA, IDEA, DASA, etc.)
- ▶ Do not wait to get your procedures sorted out until it's too late!



Questions?

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