

Title IX Employee Training 2024-2025

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Title IX and Policy 824 Training



TITLE IX OVERVIEW

Title IX – the Law

Title IX
of the
Education
Amendments
of 1972

“No person in the United States shall, *on the basis of sex*, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

20 U.S.C. §1681(a)



USDOE Regulations

- In 2020, the United States Department of Education (USDOE) issued changes to the Title IX regulations which went into effect August 14, 2020.
- On March 8, 2021, President Biden issued an Executive Order requiring a comprehensive review of the Title IX regulations. A Notice of Proposed Rulemaking was issued in April 2023.
- On April 29, 2024, USDOE published final regulations, with an **effective** date of **August 1, 2024**, at 89 FR 33474.



Title IX Policies



Title IX requires schools to publish and implement a policy prohibiting Title IX sex discrimination, including sex-based harassment.



Employees should review the school's Title IX policies, as approved by the school's governing body, and know the identity and contact information of your school's Title IX Coordinator.

Other Unlawful Discrimination and Harassment

NOTE: Title IX governs Title IX sex discrimination, including sex-based harassment, in the educational setting. However, harassment on the basis of other protected characteristics, such as race, color, age, creed, religion, (non-Title IX) sex, ancestry, national origin, marital status, genetic information, pregnancy or handicap/disability is prohibited under other federal, state, and/or local laws. All forms of discrimination and harassment should be reported. However, today's training focuses on Title IX sex discrimination.

OBLIGATION TO ADDRESS TITLE IX SEX DISCRIMINATION

Compliance with Title IX Mandates

In order to comply with Title IX, schools must:

- ✓ **Designate at least one Title IX Coordinator** to coordinate its efforts to comply with its responsibilities under Title IX and its regulations;
- ✓ Adopt, publish, and implement a **nondiscrimination policy** and **grievance procedures**;
- ✓ Provide students, parents/guardians, employees, applicants, and unions **notice of nondiscrimination**; and
- ✓ Ensure that all employees and designated Title IX officials receive **training** related to their duties under Title IX.

34 CFR §106.8

Training Requirements: ALL Employees

- Schools must ensure that ALL employees receive training (**promptly upon hire and annually thereafter**) on the following topics:
 - The school's obligation to address sex discrimination;
 - The scope of conduct that constitutes sex discrimination, including sex-based harassment;
 - Each employee's notification and information requirements under the Title IX regulations, triggered:
 - Upon notice of a student's pregnancy and/or pregnancy-related conditions; and
 - Upon receipt of knowledge of conduct that reasonably may constitute Title IX sex discrimination.



34 CFR §106.8(d)(1)

TITLE IX SEX DISCRIMINATION: SCOPE

What is “Sex”?

The Title IX statute does not define the material term “sex.”

Per the 2024 regulations, the phrase “on the basis of sex” includes all of the following:

- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Gender identity
- Sexual orientation

34 C.F.R. §106.10

What is “Sex Discrimination”?

- Title IX sex discrimination is discrimination on the basis of sex, sex characteristics, sex stereotypes, pregnancy or related condition, gender identity, and/or sexual orientation.
- Complaints of Title IX sex discrimination include:
 - Allegations that a school’s policy or procedures discriminate on the basis of sex.
 - Allegations of sex-based harassment.
 - Allegations that a school failed to make reasonable modifications upon receipt of notice of pregnancy or pregnancy-related conditions.
 - Allegations of retaliation.

89 FR 33654

What Is “Harassment?”

- Harassment is a form of unlawful discrimination in that it is characteristic-based treatment that adversely affects the school program or activity and/or the workplace.
 - Harassment can include actions, words, jokes, or comments based on or because of an individual’s protected characteristic(s).
 - Harassment also can include passive acts, such as alienating someone through omission or withholding necessary information or assistance.
- Sex-based harassment is a form of sex discrimination. 39 C.F.R. §106.2

What is “Sex-Based Harassment”?

Sex-based harassment prohibited by Title IX means sexual harassment and other harassment on the basis of sex, that constitutes any of the following:

Quid pro quo harassment.

Hostile environment harassment.

Specific offenses (sexual assault, dating violence, domestic violence, and stalking).

34 C.F.R. §106.2 (Definitions)

Sex-Based Harassment – Quid Pro Quo Harassment

Quid pro quo harassment – “An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient’s education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct.”

34 CFR §106.2

- **Material Concepts:**

- **Employee, agent, or other person authorized by the school.**
- **Explicitly or impliedly.**
- **Unwelcome conduct.**

Sex-Based Harassment – Hostile Environment

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 (i.e. creates a hostile environment).

34 C.F.R. §106.2

- **Material Concepts:**
 - **Subjectively and objectively offensive.**
 - **Severe or pervasive.**
 - **Limits or denies.**

Sex-Based Harassment – Hostile Environment

- **Hostile Environment Factors to Consider:** According to the 2024 regulations, whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following factors:
 1. The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity.
 2. The type, frequency, and duration of the conduct.
 3. The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct.
 4. The location of the conduct and the context in which the conduct occurred.
 5. Other sex-based harassment in the recipient's education program or activity.

39 C.F.R. §106.2

Sex-Based Harassment – Specific Offenses

Sexual Assault

- Defined as a **forcible or nonforcible sex offense** under the uniform crime reporting system of the Federal Bureau of Investigation.
34 C.F.R. §106.2.
- The FBI UCR currently... defines sex offenses as “[a]ny **sexual act including Rape, Sodomy, Sexual Assault With An Object, or Fondling** directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; **also unlawful sexual intercourse** [i.e. statutory rape and incest].” *FBI, Uniform Crime Reporting Program: National Incident-Based Reporting System* (2018).
- Includes statutory rape as a “nonforcible” sex offense.

Sex-Based Harassment – Specific Offenses

Dating Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- Where the existence of a relationship is determined based on consideration of the following factors:
 - length of the relationship,
 - the type of relationship, and
 - the frequency of interaction between the persons involved in the relationship.

34 CFR §160.2

Sex-Based Harassment – Specific Offenses

Domestic Violence

- A felony or misdemeanor crime of violence committed by a person who:
 - Is a current or former spouse or intimate partner of the victim; or a person similarly situated to a spouse of the victim;
 - Is a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - Is a person with whom the victim shares a child in common; or
 - Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

34 CFR §160.2

Sex-Based Harassment – Specific Offenses

Stalking

- A course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.
34 CFR §160.2

Pregnancy or Related Conditions

- The 2024 regulations expressly prohibit discrimination in a school's education program or activity against any student based on a **student's current, potential, or past pregnancy or related conditions**. 34 CFR §106.40
- The phrase “*pregnancy or related conditions*” includes any of the following:
 - Pregnancy, childbirth, termination of pregnancy, or lactation;
 - Medical conditions related to any of the above; or
 - Recovery from any of the above.

34 CFR §160.2



Retaliation Prohibited

- A school must prohibit retaliation, *including peer retaliation*, in its education program or activity.
- When a school has information about conduct that reasonably may constitute “retaliation” under Title IX or its regulations, the school must respond in the same manner as it responds to information of sex discrimination and sex-based harassment.
- This means that the obligation to report to the Title IX Coordinator applies equally to knowledge of conduct which may constitute retaliation.

34 C.F.R §106.71

Retaliation

- Definition of Retaliation

- **WHAT** - *intimidation, threats, coercion, or discrimination* against any person
- **WHO** - by the *recipient, a student, or an employee* or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity
- **WHY** - for the purpose of *interfering with* any right or privilege secured by Title IX or this part, *or because the person has reported information*, made a *complaint, testified, assisted, or participated or refused to participate** in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process under, in grievance procedures under and in any other actions taken by a recipient.

34 C.F.R. §106.2

Note:* A school is **not precluded from, and it has not retaliated by, mandating that its **employees** participate in Title IX investigations.

89 FR 33830

EMPLOYEE NOTIFICATION REQUIREMENTS

Knowledge

A school with “**knowledge** of conduct that **reasonably may** constitute sex discrimination in its education program or activity must respond **promptly and effectively.**” 34 CFR §106.44(a)(1)

How does a school gain “knowledge?”

- When **employees** who are not “confidential employees” **have information about conduct** that may reasonably constitute sex discrimination; or
- Upon receipt of a “complaint.”

Employee Notification Requirements

- **All** employees (who are not “confidential employees”) **MUST promptly** notify the Title IX Coordinator when they have information about conduct that may reasonably constitute sex discrimination.
- How to Report to Title IX Coordinator:
 - Report Form (best practice)
 - Email
 - Phone Call
 - In Person

When Does an Employee Have “Information”?

- Examples include:
 - If the employee observed or witnessed sex discrimination or sex-based harassment (a specific incident or a series of incidences).
 - If the employee is told that sex discrimination or sex-based harassment has occurred by the Complainant, the Complainant’s parents or friends or another 3rd party.
 - If the employee receives a voice mail or an email or any other written or verbal complaint alleging sex discrimination or sex-based harassment has occurred.
 - If the employee receives multiple reports that, taken together, provide a different picture of a person’s conduct than each incident standing alone.

Pregnancy or Related Conditions: Notification Requirements

- When a student, or a person who has a legal right to act on behalf of the student, informs **any employee** of the student's pregnancy or related condition, **the employee must** promptly:
 - Provide that person with the Title IX Coordinator's contact information; and
 - Inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the school's education program or activity.

34 CFR §106.40(2)

“Confidential Employees” Under Title IX

- Confidential employees are limited to specific categories under state or federal law or as designated by the school entity.

34 CFR §106.2

- Unless otherwise notified by your school entity, employees should presume that they are not confidential employees.



“Confidential Employees” – Notice Requirements

A school must:

- Notify all students and employees of how to contact its “confidential employees,” *if any*.

If anyone informs a “confidential employee” of conduct that may reasonably constitute sex discrimination, the confidential employee must:

- Notify the reporter of the employee’s status as “confidential” under Title IX, including the circumstances in which the employee is not required to notify the Title IX Coordinator;
- Explain how to contact the Title IX Coordinator;
- Explain how to make a complaint of sex discrimination; and
- Explain that the Title IX Coordinator may be able to (1) offer supportive measures; (2) Initiate informal resolution proceedings; and (3) Initiate investigation under grievance procedures.

34 CFR §106.44(d)

District Policy 824

Maintaining Professional Adult-Student Boundaries

Prohibited Romantic or Sexual Conduct

- Sexual physical contact
- Romantic Flirtation, propositions, or sexual remarks
- Personal comments about a student's body
- Sexual jokes, notes, stories, drawings, gestures or pictures
- Spreading sexual or romantic rumors
- Touching a student's body or clothes in a sexual or intimate way
- Accepting, offering or giving a massage
- Restricting a student's freedom of movement in a sexually intimidating way.
- Displaying or transmitting sexual objects, pictures or depictions

Prohibited Social Interactions

- Disclosing personal, sexual, family, employment or private concerns
- Communications of a personal nature
- Giving personal gifts or cards
- Touching a student w/o educational reason
- Singling out a student for personal attention or friendship beyond normal teacher-student relationship
- Being alone with student behind closed doors
- Following or accepting requests from current student to be friends or connections on personal social networking sites;

Prohibited Social Interactions (cont)

- Communications with student beyond school day w/o educational reason
- Sending student on personal errand
- Inviting student to your home or going to student's home
- Giving a student a ride without parent and school approval
- Using pet names
- Telling a student a secret
- For non-guidance counselor/social workers etc, counseling students on personal or family problems or relationships
- Communicating with students via electronic communication (including but not limited to text messages, social media) unless there is a legitimate educational reason.

Thank You!

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