



# Title IX: Take Two

Training for Education Affiliates Employees  
on the New Title IX Regulations

Suzanne Peters, Title IX Coordinator

# The Title IX Statute

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs and activities and employment.

- Covers not only equity in athletic programming, but all forms of discrimination based on sex.
- Protects students and employees.
- Applies to all institutions that receive federal financial assistance, either directly or indirectly.
- Enforced by the Office of Civil Rights.

# The Title IX “Regs”

Regarding students, specifically prohibit discrimination in:

Admission and  
recruitment

Education  
programs or  
activities

Housing

Facilities

Counseling

Financial and  
employment  
assistance

Health  
insurance and  
benefits

Marital or  
parental  
status

Athletics

# The Title IX “Regs”

Regarding employees, specifically  
prohibit discrimination in:

Employment

Recruitment

Compensation

Job  
classification

Fringe  
benefits

Marital or  
parental  
status

Advertising

Pre-  
employment  
inquiries

Employment  
criteria

# Sex Discrimination

## What is discrimination “on the basis of sex”?

- Includes discrimination on the basis of:
  - sex stereotypes,
  - sex characteristics,
  - pregnancy or related conditions,
  - sexual orientation, and
  - gender identity.
- It also includes Sex-Based Harassment.

# Sex Discrimination

Sex Discrimination often takes the form of Disparate Treatment or Disparate Impact discrimination.

- **Disparate Treatment**

- Disparate treatment discrimination occurs where similarly situated persons are intentionally treated differently because of their sex.
- Disparate treatment, however, is permissible under Title IX in certain circumstances, such as admission to single-sex social fraternities and sororities, and in others where the disparate treatment does not subject persons to more than de minimis (i.e., immaterial) harm.

- **Disparate Impact**

- Disparate impact discrimination occurs where a sex-neutral policy or practice, applied evenhandedly, effects persons differently based on their sex without a substantial and legitimate justification.

# Sex-Based Harassment

Sex-based harassment means sexual harassment and other harassment on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity, or other sexual harassment or sex-based conduct that is:

Quid Pro Quo  
Harassment

Hostile Environment  
Harassment

One of Several Specific  
Offenses

(Sexual Assault, Dating Violence,  
Domestic Violence, or Stalking)

# Sex-Based Harassment

## Quid Pro Quo

An employee, agent, or other person authorized by the school to provide an aid, benefit, or service of the school explicitly or impliedly conditioning the provision of that aid, benefit, or service on a person's participation in unwelcome sexual conduct.

## Hostile Environment

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 school's education program or activity.

## Specific Offenses

- Sexual assault including rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape.
- Dating violence
- Domestic violence
- Stalking



# Specific Offenses

**Sexual assault** meaning any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse.

- Rape;
- Sodomy;
- Sexual Assault with an Object;
- Fondling;
- Incest; and
- Statutory Rape.

**Stalking** meaning engaging in 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.

# Specific Offenses

**Dating violence** meaning 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 such a relationship shall be determined based on a consideration of the length and type of the relationship and frequency of interaction between the persons involved in the relationship.

**Domestic violence** meaning felony or misdemeanor crimes committed by a person who:

- Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the school, or a person similarly situated to a spouse of the victim;
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- Shares a child in common with the victim; 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.

# Retaliation

- The regulations require that schools prohibit retaliation, including peer retaliation.
- Retaliation means **intimidation, threats, coercion, or discrimination** against any person by a school, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the school's education program or activity, **for the purpose of interfering with any right or privilege secured by Title IX or because the person reported information, made a complaint, testified, assisted, or participated or refused to participate** in any manner in an investigation, proceeding, or hearing, including in an informal resolution, in grievance procedures, and in any other actions taken by a school.
- When a school has information about conduct that reasonably may constitute retaliation the school must take the same actions as if it had received notice of sex discrimination.

# Jurisdiction

- On-campus conduct
- Off-campus conduct, including:
  - Settings operated or overseen by the school (e.g., online classes, athletic programs, off-campus trips);
  - Buildings owned or controlled by officially-recognized student organizations (e.g., sorority and fraternity houses); and
  - Conduct subject to the school's disciplinary authority (i.e., any conduct the school chooses--or is required by law--to exercise its disciplinary authority over outside of Title IX).

# Jurisdiction

Schools are also required to address a sex-based hostile environment under their education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the school's education program or activity or outside the United States.

# Employee Reporting Obligations

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# Employee Obligations

\*\*\*All employees (other than confidential employees) must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX.\*\*\*

# Confidential Employees

- Confidential Employees are an exception to the reporting requirements.
- Confidential Employee means:
  - An employee whose communications are privileged or confidential under Federal or State law;
  - An employee whom the school has designated as confidential for the purpose of providing services to persons related to sex discrimination; or
  - An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination.
- An employee's confidential status is only with respect to information received about sex discrimination while acting in their confidential role.



# Confidential Employees

When a person informs a confidential employee of conduct that reasonably may constitute sex discrimination the confidential employee must still explain the following:

- The confidential employee's status as confidential, including the circumstances in which the confidential employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination;
- How to contact the Title IX Coordinator and how to make a complaint; and
- That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation.

# Title IX Coordinator

- Suzanne Peters serves as the Title IX Coordinator for Education Affiliates, including all affiliated institutions.

## **Suzanne Peters**

Phone: (330) 805-2819

Email: [SPeters@edaff.com](mailto:SPeters@edaff.com)

- Suzanne will coordinate the process from initial complaint through final resolution.

# Campus Presidents

- The Campus President is the “on-campus” contact.
- Responsibilities:
  - First point of contact at your location
  - Contact Suzanne Peters as soon as possible
  - Help victim with community resources
  - Report offense to law enforcement, when appropriate
  - Oversee annual training for campus employees, all new employees (LEARN) and ensure all new students are receiving Victim Bill of Rights during orientation
  - Maintain careful documentation of any incidents in a Title IX/VAWA binder

# Recordkeeping

- Schools must maintain the following for at least 7 years:
  - For each complaint of sex discrimination, records documenting the informal resolution process or the grievance procedures and the resulting outcome;
  - For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination, records documenting the actions the school took in response to that report; and
  - All training materials.

**Responding**

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# Supportive Measures

- The Title IX Coordinator oversees the implementation, modification, and termination of supportive measures.
- Supportive measures are individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent.
- Such measures must be designed to:
  - Restore or preserve that party's access to the school's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or
  - Provide support during the grievance procedures or during the informal resolution process.

# Examples of Supportive Measures

Counseling

Extensions of  
deadlines or other  
course-related  
adjustments

Modifications of  
work or class  
schedules

Campus escort  
services

Restrictions on  
contact applied to  
one or more  
parties

Changes in work  
locations

Changes in  
housing locations

Leaves of absence

Increased security  
and monitoring of  
certain areas of  
the campus

# Emergency Removal

- The Title IX Coordinator may remove a respondent on an emergency basis if:
  - The Title IX Coordinator undertakes an individualized safety and risk analysis and
  - Determines an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal.
- The Title IX Coordinator will provide notice to the respondent with the opportunity to challenge the decision immediately following the removal.



# Administrative Leave

- The Title IX Coordinator may also place an employee respondent on administrative leave during the “pendency of [its] grievance procedures.”

# Report vs. Complaint

- How the school must respond depends on whether the individual made a Report or a Complaint.
- **Report** means a notification to the school of possible sex discrimination or retaliation.
  - A Report—as distinct from a Complaint—does not request the school to investigate and make a determination about the allegations.
  - A Report may, however, include a request that the school provide supportive measures.
- **Complaint** means an oral or written request to the school that objectively can be understood as a request for the school to investigate and make a determination about alleged sex discrimination or retaliation. A Complaint initiates the Title IX grievance process.

# The Grievance Process

# Title IX Grievance Process

- The steps in the grievance process depend on the allegations. Specifically, there are additional steps for complaints involving allegations of **sex-based harassment involving a student party**.
- In all cases, however, the grievance process can be divided into the following four stages.

Evaluation

Investigation

Determination

Appeal

# Evaluation

During the Evaluation stage:

- The Title IX Coordinator considers whether the alleged conduct, if proven, would constitute Title IX Sex Discrimination.
- The Title IX Coordinator also considers whether to dismiss the Complaint or consolidate it with other complaints.
- The Title IX Coordinator then provides notice of the Complaint to the parties.

# Investigations

## During the Investigation stage:

### Burden of investigation

The burden is on the school and Title IX Coordinator - not the parties - to gather sufficient evidence for a determination.

### Equal opportunity

The parties have an equal opportunity to present relevant fact witnesses and other inculpatory and exculpatory evidence.

### Evidentiary determinations

The Title IX Coordinator will review all evidence and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

### Review of evidence

The Title IX Coordinator will provide each party with the relevant evidence that is not impermissible (or a description/written report) and a reasonable opportunity to respond.

### Credibility determinations

The Title IX Coordinator will participate in a manner that allows them to adequately assess credibility of parties and witnesses.

# Sex-Based Harassment

- In Complaints of sex-based harassment involving a student party, the Title IX Coordinator will permit the parties to propose questions the party wants asked of any Party or witness.
- The Title IX Coordinator will evaluate the questions to determine whether they are **relevant** and **not otherwise impermissible**.

# Sex-Based Harassment

- If permissible, the Title IX Coordinator will ask the question.
- The Title IX Coordinator will provide the asking party with an audio or audiovisual recording or transcript of the response.
- The party may then propose follow-up questions.



# Determination

During the Determination stage:

- The Title IX Coordinator will use the preponderance of the evidence standard to determine whether sex discrimination occurred.
- The parties will be notified of the determination and permissible bases for appeal.

# Remedies and Sanctions

Following a determination that sex discrimination occurred, the school may impose disciplinary sanctions on the respondent and provide remedies to a complainant.

# Examples of Sanctions

Disciplinary  
warning

Suspension,  
expulsion, or  
termination

Behavioral  
agreement

Letter of apology

Reflection/research  
paper

Mandated  
counseling

Mandatory training

Community  
restitution

Mandatory  
meetings with the  
Title IX Coordinator

# Examples of Remedies

No Contact Order

Campus escorts

Adjusting class  
schedule

Counseling

Academic support

Changes in work  
locations

Leaves of absence

Adjusting  
reporting lines

Increased security  
and monitoring of  
certain areas of  
the campus

# Informal Resolution

- The Title IX Coordinator may offer the parties an informal resolution process at any time prior to determining whether sex discrimination occurred, **unless** such a process would conflict with applicable laws.
- The Title IX Coordinator may decline to offer informal resolution despite one or more of the parties' wishes. Reasons for declining would include, but not be limited to, when the Title IX Coordinator determines that the alleged conduct would present a future risk of harm to others.
- The Title IX Coordinator will not require or pressure the parties to participate in an informal resolution process.

# Pregnancy & Marital Status

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# Nondiscrimination

- Schools must not adopt or implement any policy, practice, or procedure concerning a student's or employee's **current, potential, or past parental, family, or marital status** that treats students differently on the basis of sex.
- Schools must not discriminate in their education programs or activities against any student based on the student's or employee's **current, potential, or past pregnancy or related conditions**.

# Definitions

Pregnancy or related conditions means:

- Pregnancy, childbirth, termination of pregnancy, or lactation;
- Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.



# Response to Pregnancy

- When a **student** (or person with a legal right to act on behalf of the student) informs any employee of the student's pregnancy or related conditions, the employee must promptly:
  - Provide the contact information of the Title IX Coordinator; 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.
- This notice does not need to be provided if the employee reasonably believes the Title IX Coordinator has been notified.

# Questions?

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