



STATE OF INDIANA
Governor's Workforce Cabinet
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To: CTE Directors
From: Kathleen Ash, MOA Coordinator
Date: September 2, 2020
Re: New Title IX Regulations

Title IX of the Education Amendments of 1972 is a federal law which protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. On August 14th, new Title IX regulations took effect which place new requirements on local educational agencies (LEAs) regarding how they must respond to and address sexual harassment and sexual assault grievances.

The new Title IX regulations include: (1) a description of the types of behavior constituting sexual harassment; (2) the conditions that trigger an LEA's obligation to respond to incidents or allegations of sexual harassment; and (3) the way in which an LEA must respond to a report of sexual harassment.

Definition of Sexual Harassment

Under Title IX, sexual harassment means conduct that satisfies one or more of the following: (1) quid pro quo sexual harassment; (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; or (3) sexual assault, dating violence, domestic violence or stalking (as defined under the Clery Act and the Violence Against Women Act.)

Obligation to Respond

An LEA is obligated to respond when: (1) the LEA has actual knowledge of sexual harassment; (2) the harassment occurred within an LEA's own educational program or activity; and (3) the harassment was perpetrated against a person in the United States.

"Actual knowledge" means notice of sexual harassment or allegations of sexual harassment received by: (1) a Title IX Coordinator; (2) any school official who has the authority to institute

corrective measures on behalf of the LEA; or (3) *any* employee of an elementary and secondary school.

“Educational program or activity” includes locations, events or circumstances where the LEA exercises substantial control over the context in which the alleged sexual harassment occurred and the person accused of committing the sexual harassment. This includes any building owned by a student organization that is officially recognized by a postsecondary institution.

Required Response

Upon receipt of a report of sexual harassment, an LEA must: (1) respond promptly, in a manner that is not deliberately indifferent; (2) inform the complainant of the right to file a formal complaint, and explain how to do so; and (3) inform both parties of the availability of supportive measures and informal resolution, if applicable. An LEA’s response is “deliberately indifferent” only if it is clearly unreasonable in light of the known circumstances.

In response to receiving a formal complaint, an LEA has the additional requirement of adhering to its grievance procedure, as outlined below.

Supportive measures are free, individualized services for students, implemented by the Title IX Coordinator, which include: counseling; extensions of deadlines; modifications of work or class schedules; campus escort services; changes in housing location; increased security or monitoring of parts of campus; and mutual restrictions on contact between individuals.

Formal Complaint

A formal complaint is an official document, filed by a complainant or signed by the Title IX Coordinator, alleging sexual harassment, against a respondent, and requesting that an LEA investigate the allegation of sexual harassment. It may be filed by any person or group, including the complainant’s parent or guardian, or the Title IX Coordinator. At the time of filing, a complainant must be participating in or attempting to participate in the education program or activity of the LEA with which the formal complaint is filed.

Written Policies

The new Title IX regulations require all LEAs to develop, institute and publish their written policies on sexual harassment. Policies must meet the requirements listed below, and must be distributed to all students, employees, applicants, parents, guardians, and unions.

A. Title IX Coordinator

All LEAs must designate at least one person to be the Title IX Coordinator. The Title IX Coordinator’s contact information, including name (or title), office address, telephone number and email address must be posted on the LEA’s website and disseminated to all students, employees, applicants, parents, guardians and unions. LEAs must indicate that a report of sexual harassment or sex discrimination can be made to the Title IX Coordinator at any time, in person,

or by mail, telephone or email. The Title IX Coordinator must receive specialized training and the training materials must be published on the LEA's website.

B. Notice of Non-Discrimination Policy

LEAs must publish on their website a notice that they have a policy of non-discrimination on the basis of sex, and disseminate the same to students, employees, applicants, parents, guardians and unions in publications such as handbooks and catalogs.

C. Written Grievance Procedure

All LEAs must adopt and publish a written grievance procedure for complaints of sexual harassment and distribute it to all students, employees, applicants, parents, guardians, and unions. The grievance procedure must outline the process by which an individual may report or file a complaint of sexual harassment or sex discrimination and how the LEA will handle such a complaint. Specifically, the grievance procedure must adhere to the following:

1. Treat complainants and respondents equitably: remedies must be provided to a complainant if a respondent is found responsible and the prescribed grievance process imposing discipline on a respondent must be followed.
2. Require an objective evaluation of all relevant evidence.
3. Require that any individual designated as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias. All aforementioned individuals must receive specialized training.
4. Include a presumption that the respondent is not responsible for the alleged conduct (presumption of innocence.)
5. Include reasonably prompt timeframes for conclusion of the grievance process; delay can only be for good cause. (E.g. the absence of a party or witness; the presence of concurrent law enforcement activity; the need to provide language assistance or accommodate a disability, etc.)
6. List or describe the range of possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility.
7. State whether the standard of evidence to be used will be the preponderance of the evidence standard or the clear and convincing standard and apply the same standard to all formal complaints.
8. Include the procedures and permissible bases for the complainants and respondents to appeal.
9. Describe the range of supportive measures available to complainants and respondents.

10. Not require, allow, rely upon or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Grievance Process

Upon receipt of a formal complaint, LEAs must provide written notice to all parties that an investigation has begun; the notice should include certain information such as: notice of the grievance procedure; whether informal resolution is available; and details of the allegation(s). While conducting an investigation into the complaint, the LEA must afford both parties specific equal rights and protections. Upon conclusion of the investigation, and prior to conducting a hearing, a written investigative report summarizing relevant evidence, must be issued to all parties. Although postsecondary LEAs are required to conduct hearings as part of their grievance process, secondary LEAs are not. When a hearing is not conducted, the parties must be allowed to submit written questions to one another. Following evaluation of all relevant evidence garnered throughout this process, a written determination regarding responsibility must be issued to all parties, which explains, in detail, the outcome and the parties' right to appeal.

Hearings

Postsecondary LEAs are required to hold a live hearing. An LEA must provide a party with an advisor for the purpose of conducting cross-examination on that party's behalf. Parties' advisors must be allowed to cross-examine witness and other parties; no party is allowed to personally question or cross-examine anyone. An LEA may choose to hold the entire live hearing virtually, or allow some participants to appear virtually with technology that allows everyone to see and hear each other. Either party may request that the hearing be held with the parties located in separate rooms, with technology enabling everyone to see and hear one another. LEAs must create an audio or audiovisual recording or transcript of the live hearing and make it available for parties' inspection and review. Throughout the process, an LEA must comply with disability laws and ensure that individuals with disabilities, who participate in the process, are appropriately accommodated.

For more information on Title IX, please consult the following resources:

Title IX Guidance for secondary schools:

- Indiana Department of Education Memorandum:
https://www.doe.in.gov/sites/default/files/news/june-12-final-title-ix-regs-guidance-1docx-proposed-final-version-nm.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

Title IX Guidance for postsecondary schools:

- Checklist <https://www.thompsoncoburn.com/docs/default-source/blog-documents/2020-8-12-title-ix-compliance-checklist-final.pdf>.

Office for Civil Rights (OCR):

- Title IX Webinar: <https://www.youtube.com/watch?v=TdfT5R8ibm4>
- Title IX Documents: https://www2.ed.gov/about/offices/list/ocr/blog/20200722.html?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=
- LEA Website Requirements: <https://www2.ed.gov/about/offices/list/ocr/blog/20200518.html>
- Sample Notice of Non-Discrimination (satisfies Title VI, Title IX and Section 504 requirements): <https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>

Title IX:

- 34 CFR Part 106 <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>

If you have any questions regarding this memo or Title IX regulations in general, please contact Katheen Ash, MOA Coordinator, at KaAsh@gov.in.gov.

Disclaimer: The purpose of this document is to provide general information only and does not represent a complete recitation of applicable law in this area.

Technical assistance is always available upon request. You may submit any requests or questions to: CTECivilRights@gov.in.gov or contact Kathleen Ash at KaAsh@gov.in.gov