

Title IX Changes: 2024

Shawsheen Valley Technical High School
August 20, 2024

Update to Title IX

- ▣ New changes go into effect on August 1, 2024.
- ▣ Which regulations do we use?
 - ▣ Conduct that occurred prior to August 1, 2024: use the older regulations.
 - ▣ Conduct that occurs on or after August 1, 2024: use the new regulations.

Title IX of the Education Amendments Acts of 1972

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.

*Scope of 'discrimination based on sex' broadened to specifically include discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Overview of Changes

- ❑ The changes include protection for the LGBTQ+ community. Discrimination and/or harassment includes **sexual orientation and gender identity** for the first time ever.
- ❑ Schools have more flexibility in the procedures and allows for informal resolution consistent with the **age of the student and the nature of the allegation.**
- ❑ The changes broaden the scope of a “**hostile environment**” by saying “unwelcome sex-based conduct... 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” their education.”
- ❑ Schools may use a single-investigator model allowing the Title IX Coordinator to investigate and be the decision-maker (simplifying the process).
- ❑ Protections for Special Education and 504 students.
- ❑ Protections for pregnant students or pregnancy-related conditions.
- ❑ *** For the first time, there is a resource for schools to use, including policies, notices, and procedures.

Who is Protected?

Title IX protects all students and school employees from sex-based harassment in education programs or activities that receive federal financial assistance, regardless of the sex of the parties, including when they are members of the same sex.

- Any student or school employee can experience sex-based harassment, including:
 - Male and female students/employees,
 - LGBT students/employees,
 - Students/employees with disabilities, and
 - Students/employees of different races, national origins, and ages.

What is Prohibited?

- Staff on staff misconduct
- Staff on student misconduct
- Student on student misconduct
- Student on staff misconduct
- Third party on student or staff (if the third party is alleged to have been subjected to conduct that could constitute sex discrimination and who was participating or attempting to participate in the recipient's education program/activity at the time of the alleged discrimination.

Sexual-Based Harassment

Sex-based harassment includes sexual harassment and harassment based on sex stereotypes, sex characteristics, pregnancy or related conditions, gender identity and sexual orientation, and other sex-based conduct.

- Any instance of quid pro quo harassment (actively or impliedly conditioning the provision of an aid/benefit/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 recipient's education program or activity."
 - Whether a hostile environment is created is a fact-specific inquiry that includes consideration of degree to which access is affected, type/frequency/duration, parties' age/roles/previous interactions/other factors, location, and other sex-based harassment in the recipient's program/activity.
- Sexual assault: an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

Pregnancy or Related Conditions

- ❑ Prohibits schools from adopting or implementing policy/practice/procedures regarding or discriminating in its education program/activity against any student based on student's current, potential, or past parental, family, or marital status that treats students differently based on sex.
- ❑ Schools must ensure that when student/parents tell of student's pregnancy or related conditions, employee must promptly provide Title IX Coordinator's contact info and inform the person that the Coordinator can coordinate specific actions to prevent discrimination and ensure access (info about obligations, reasonable modifications, voluntary access to separate comparable portion of program/activity and/or voluntary leaves of absence, and lactation space).

LGBTQ+

- ❑ “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.”
- ❑ Schools are prohibited from separating or treating any person differently based on sex in a manner that subjects that person to more than minimal harm. This includes preventing them from participating in an educational program or activity consistent with their gender identity.

LGBTQ+

- ▣ New regs do not address how the definition applies to single-sex facilities (bathrooms, locker rooms).
 - ▣ A school may provide separate toilet, locker room and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.
- ▣ New regs do not address how the definition applies to single-sex athletic teams. Stay tuned!

Students with Disabilities

- Title IX Coordinator must consult with one or more members of the student's IEP/504 team to determine how to comply with IDEA/504 while implementing Title IX grievance procedures and when determining appropriate supportive measures.
- This includes manifestation determinations and change in placement.
- Title IX Coordinator should consider how the student's inability to understand conduct or form intent may affect the findings.

Examples of Sexual Harassment

Unwelcome conduct of a sexual nature:

- unwelcome sexual advances,
- requests for sexual favors,
- verbal, nonverbal or physical conduct of a sexual nature,
- sex discrimination,
- sexual misconduct or physical abuse,
- threats of violence,
- physical assault,
- any form of sexual violence, including but not limited to sexual assault, acquaintance rape, sexual coercion, domestic violence, dating violence or stalking.

School's Responsibility

A school with knowledge of conduct that reasonably may constitute sex discrimination in its program or activity must respond promptly and effectively and must also comply with this section to address it.

- The conduct occurred in the school's education program or activity in the U.S (locations, events or circumstances over which the school has substantial control over the respondent and context in which harassment occurs);
- The complainant is participating in or attempting to participate in an education program or activity at the school at the time of the alleged sex discrimination.

*Schools have an obligation to address sex-based hostile environment under its educational program or activity even when some conduct alleged to be contributing to the hostile environment occurred outside the ed program or activity or outside the US.

Actual Knowledge

Elementary/secondary schools must require all employees to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination.

Any employee with actual knowledge of allegations of sex-based harassment must immediately report the incident to the school's Title IX Coordinator who will then take specific actions to promptly and effectively end any sex discrimination, prevent its recurrence, and remedy its effects (unless it is determined that the conduct could not constitute sex discrimination).

Title IX Coordinator

Schools must have at least one employee designated as the Title IX Coordinator to coordinate its efforts to comply with its responsibilities under Title IX. If there is more than one, one person must act as the lead and retain ultimate oversight over the responsibilities and ensure compliance.

Title IX Coordinator can delegate responsibilities to a designee.

Updates to Policy

- Schools must adopt, publish, and implement a policy stating that the school does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates.
- Schools must provide notice of nondiscrimination to students, employees, and other listed persons, with specific components, including how to locate the policy and grievance procedures and to report conduct that may constitute sex discrimination.
- Schools must adopt, publish, and implement grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX.

Training

- All employees must be trained on school's obligation to address sex discrimination in its education program/activity, scope of conduct that constitutes sex discrimination, and notification and information requirements.
- Additional training requirements for investigators, decision-makers, and others responsible for implementing grievance procedures.
- Schools must make training materials available upon request for inspection.
- Website posting requirement is removed.

Four Major Stages to Process

- Evaluation.
- Investigation.
- Determination.
- Appeal.

Reasonably prompt timeframes for major stages of the process.

Evaluation

Evaluation of Allegations

Title IX Coordinator must reasonably determine if the conduct as alleged could constitute sex discrimination.

Assume the allegations are true. If so, do they rise to the level of sex discrimination?

If not, then the Title IX Coordinator does not initiate the steps under Title IX (letter).

If yes, then the Title IX Coordinator must move forward in the process.

First Steps

The Title IX Coordinator must take the following actions to promptly and effectively end any sex discrimination, prevent its recurrence, and remedy its effects:

1. Treat the complainant and respondent equitably.
2. Offer and coordinate supportive measures as appropriate.
3. Notify complainant of grievance procedures and informal resolution process (letter).
4. Initiate grievance procedures/informal resolution process as appropriate.
5. Determine whether to initiate a complaint under certain circumstances.*

Supportive Measures

- Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening complainant or respondent, not for punitive or disciplinary reason, without charge to restore/preserve party's access to education program/activity (including safety), or to provide support during grievance/informal resolution process.
- School may modify or terminate supportive measures at conclusion of grievance/informal resolution process.
- If complainant/respondence is a student with a disability, the Title IX Coordinator must consult with one or more members of the IEP/504 team to determine how to comply with IDEA/504.
- Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Informal Resolution Process

School may offer informal resolution process at any time prior to determining whether sex-based harassment occurred, BUT not if complaint includes allegations of employee engaging in sex-based harassment of an elementary or secondary student.

*School has discretion to offer this and may decline to do so when the alleged conduct would present future risk of harm to others.

Informal resolution can be offered even if no complaint is made.

Informal Resolution Process

Participation is voluntary. Notice must be sent to the parties of the allegations, right to withdraw and initiate grievance procedures, that agreements to resolution at the conclusion of the informal process precludes grievance procedure for same allegations, terms that may be requested or offered, what information will be maintained and whether/how disclosed (letter).

Facilitator must not be the same person as investigator or decision-maker in grievance procedures, must not have a conflict or interest or bias, and must receive training.

Complaint

Oral or written request to the school that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination.

Signature is no longer required.

Can be made by the alleged victim, guardian, Title IX Coordinator.

Dismissal

School may dismiss the complaint if it is unable to identify the respondent after reasonable steps; the respondent is not participating in the education program/activity or not employed by the school; complainant involuntarily withdraws allegations; or Title IX Coordinator determines conduct, even if true, would not constitute sex discrimination.

School must notify complainant of dismissal and appeal rights.

Supportive measures must still be offered.

Sexual Harassment Policy

If a formal complaint is not filed or if the complaint is dismissed because it does not meet the standard of Title IX, then the school must still consider its own sexual harassment policy.

Conduct may fall under the sexual harassment policy even if it does not fall under Title IX.

Investigation

Investigation

Schools may use a single-investigator model, meaning the decision-maker may be the same person as the Title IX Coordinator or the investigator. Appeal decisionmaker must be different.

Schools must still provide for adequate, reliable, and impartial investigation of all sex discrimination complaints, with specific requirements regarding evidence, response and privacy.

Notice of Allegations

Schools must provide notice of allegations to parties whose identities are known upon initiation of grievance procedures (letter).

Notice must include grievance procedures, informal resolution process, sufficient information to allow parties to respond (including identities), statement that retaliation is prohibited, statement that parties are entitled equal opportunity to access relevant evidence.

Updated notice is required throughout the process if school decides to investigate additional allegations.

Grievance Procedure

School's grievance procedures “for the prompt and equitable resolution of complaints of sex discrimination” apply to all complaints of sex discrimination with specific changes regarding age, maturity, and level of independence of students, contexts of employees and 3rd parties.

Grievance procedures must be in writing.

Investigation

- The Title IX Coordinator will designate an investigator (the Title IX Coordinator can be the investigator).
- The investigator must be impartial (consider hiring an external person to conduct investigation) and must maintain a presumption that the respondent is not responsible for the alleged conduct.
- The investigator will be responsible for interviewing parties and witnesses, reviewing documentation/physical evidence, finding facts, and making determinations related to credibility, all of which will go into a written report.
- The investigation must be adequate, reliable, thorough and prompt.

Conducting the Interviews

- Speak to all witnesses – establish rapport and make them feel comfortable.
- Victims / witnesses should be interviewed first; in private and confidentially.
- Plan questions to establish good flow to the interview but be prepared to improvise and ask impromptu questions.
- Be an active listener during an interview and reiterate or restate responses to ensure accuracy if necessary.
- Do not interrupt a victim/witness during an interview, allow them to talk (silence between questions will often elicit additional information)
- Ask open-ended questions, such as who, what, where, when and why.
- Take notes of the individuals' answers and note any behavioral observations, when appropriate.
- Remain respectful and non-judgmental.

Investigation Report

- Findings should be written in a factual way in an investigative report.
- Report should fairly summarize relevant evidence.
- Investigative report will be sent to both the complainant and respondent. It will also be sent to the decision-maker.

Respond to Investigation Report

Once the report is sent, the complainant and respondent will be provided with an opportunity to review and respond to the investigative report in writing.

A school district must think about how a reasonable person would view the conduct when determining whether the conduct constitutes sexual harassment. In making this determination, school districts may consider the age and number of parties involved.

Privacy

- Must take “reasonable steps” to protect the privacy of parties and witnesses, provided the steps do not restrict ability of parties to obtain and present evidence, including by speaking to witnesses, consult with family members, lawyers, etc., prepare for or participate in the grievance procedures, or otherwise defend their interests.
- Must not disclose the identity of a party, witness, or participant except in certain circumstances when conducting informal resolution process.
- May not disclose personally identifiable information obtained through complying with Title IX, with limited exceptions, such as when a school has prior written consent or when the information is disclosed to the parent of a minor.

Determination

Standard of Proof

- The respondent must be presumed not responsible for alleged sex discrimination until a determination is made at the conclusion of the grievance procedures.
- Preponderance of the evidence: more likely than not.

Written Decision

The decision-maker will issue a written determination to the parties regarding whether sex discrimination occurred, remedies/sanctions, and procedures for appeal.

The decision can be the same investigative report with a conclusion outlined.

Discipline

If the respondent is ultimately found responsible, Title IX Coordinator must:

- Coordinate remedies to complainant and other persons identified having had equal access limited or denied by sex discrimination;
- Coordinate disciplinary sanctions on respondent including notification to complainant; and
- Take other appropriate prompt and effective steps to ensure sex discrimination does not continue to occur.

School cannot take disciplinary action under its Title IX policy in the absence of following this formal process.

However, this policy does not limit the school from removing a student or employee from a program or activity on an emergency basis based on imminent threats to people's physical health or safety or placing an employee on administrative leave during the pendency of the investigation.

Appeal

Appeal Process

- The school will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
- Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- The appeal decision-maker will review the comprehensiveness and accuracy of the investigation and the conclusions, and issue written findings to both the complainant and respondent.

Do Not Forget

- Contact law enforcement if allegations include potential criminal charges
- File 51A with DCF
- Consult with legal counsel
- Notice to DESE if resignation/dismissal due to misconduct.

- Questions?
- Comments?
- Concerns?
- Was this helpful?