



Where to Start: First Steps Toward Implementation of the Title IX Rule for K-12 Districts

On May 6, 2020, the Department of Education released a new [Title IX rule](#) codifying into law a myriad of provisions governing how K-12 districts and institutions must respond to sexual assault. The new regulations are effective August 14, 2020. For many public school districts, navigating the response to student-on-student sexual harassment and assault has been difficult due to limited resources for training, tensions with existing state laws, and the district's obligation to provide free and appropriate public education.

First and foremost, the Victim Rights Law Center (VRLC) advises students who have been victims of sexual assault. We also recognize that under-resourced districts and overwhelmed administrators simply cannot implement a comprehensive and trauma-informed response without help. This "Where to Start" guidance provides some small but manageable first steps districts can take to establish a robust response to reports of sexual and gender-based harassment and assault.

This quick primer is intended to get school districts started in the right direction. **This does not constitute legal advice** and does not address everything required for a comprehensive response. If you have specific legal questions, consult your general counsel or a private attorney. We realize that many districts have a lot of work ahead, but here are a few critical first steps.

5 Steps Toward Trauma-Informed Implementation of the new Title IX Rule...

1. **Review your school district's sexual harassment policy and make sure it covers the full spectrum of sexual harassment.** It seems simple, but we have found in our representation of sexual assault survivors that many school districts do not have a policy that completely covers sexual harassment. Keep in mind that when the Title IX rule refers to sexual harassment this includes sexual assault, dating violence, domestic violence, and stalking. Title IX also prohibits retaliation for reporting.¹ Review your policy and confirm that it includes definitions for:

- Sexual Harassment

- Dating and Domestic Violence
- Sexual Assault
- Stalking
- Retaliation

To review the definitions contained within the Title IX rule, [click here](#).

Districts **must** respond to incidents that occurred in the “education program or activity.”² This includes locations, events, or circumstances over which the district has exercised substantial control over both the person accused of sexual harassment and the context in which the sexual harassment occurs. ***The Title IX rule does not prohibit districts from investigating conduct that is not covered by Title IX and occurs outside of the education program.***³

2. **Determine who your Title IX Coordinator is and then consider designating a few more.** The Title IX Coordinator bears a heavy load of responsibilities under the Title IX Rule. Their primary functions include coordinating supportive measures (discussed below), determining whether the district must investigate the allegations, and oversight of grievance procedures.

In most school districts it will be unrealistic and not a best practice to utilize a single individual for this role. Rather, it will be useful to consider designating a Title IX Coordinator for each school. Coordinating supportive measures and assessing whether to investigate are functions that often involve a deep understanding of the school building, schedules, resources, personnel, and students. Requiring a single individual to take on this role for entire districts with multiple elementary, middle and high schools, often in addition to another full-time position, will lead to burnout on the part of the coordinator and potentially unsafe circumstances for students.

When selecting Title IX Coordinators, the district must identify employees who do not have a conflict of interest or bias. This would likely disqualify administrators who are responsible for addressing student discipline issues other than sexual harassment, as these individuals may have knowledge of previous or unrelated conduct issues. Additionally, individuals who serve as resources for all students should not be selected because this may prevent the students involved from seeking their support in the future. Generally, districts should identify administrators who are not regularly involved with students to minimize the likelihood that the Title IX Coordinator will have a conflict of interest. In the event that there is a conflict of interest between a Title IX Coordinator and a party, having multiple Title IX Coordinators previously designated and trained will be critical.

Title IX Coordinators will:

- Inform the person who experienced harm of the availability of supportive measures;
- Explain to the person who experienced harm the process for submitting a formal complaint;
- Have the ability to sign a formal complaint to initiate an investigation; and
- Inform the parties about their ability to submit information as part of the investigation, as well as their ability to review any evidence collected as part of the investigation that is directly related to the allegations raised in a formal complaint.

Title IX Coordinators should not:

- Have a conflict of interest or bias;
- Decide whether the respondent is responsible for violating the policy; or
- Review appeal requests.

The district must notify students, parents/legal guardians, applicants for admission, job applicants, and all unions or professional organizations holding collective bargaining or professional agreements with the district of the:

- Title IX Coordinator's name and title,
- Office address,
- E-Mail address, and
- Telephone number of the employee or employees designated as a Title IX Coordinator.

This information should be posted in all student handbooks, employee discrimination policies, school websites within the district, and within job postings.

3. **Train your Title IX Coordinators.** Keep in mind, all Title IX Coordinators must be trained, and those training materials must be made available on the district or school's website.⁴

Training topics should include:

- The dynamics and definitions of sexual harassment, sexual assault, dating and domestic violence, and stalking;
- The scope of the district's education program and activities;
- The district's obligation to provide supportive measures and the range of measures available;
- The district's obligation to respond under Title IX and the required elements of the grievance process;
- How to conduct an equitable investigation, including interviewing techniques;

- Bias, including how to be impartial, avoiding prejudgment of the facts at issue and conflicts of interest; and
- The appeal process.

To discuss potential training options, [contact the VRLC](#).

4. **Remind all school staff that they are required to report sexual harassment.**

A report to any employee of an elementary or secondary school means the district has actual knowledge of alleged sexual harassment.⁵ So, what does that mean? The district should instruct all employees that they must notify the Title IX Coordinator if they see or hear about allegations of sexual harassment. Once the school has actual knowledge of an incident that falls under Title IX, the district **must** respond. In other words, if a high school student tells a coach that they were groped by another student on the bus, the school is on notice and must respond. The district is not relieved of its obligation if the coach is not trained to share this information with a Title IX Coordinator who can act on it.

Strategies for ensuring employees are aware of their reporting obligations:

- Include this information in any new employee orientation programming or onboarding process;
- Remind staff most likely to receive reports (teachers, coaches, administrative staff) during faculty meetings throughout the year;
- Incorporate training related to the district's obligation to respond into professional development opportunities; and
- Describe the employee's obligation to report in any employee handbook.

5. **We received a report of sexual harassment, now what?** A school must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means in a way that is reasonable in light of what is known.⁶ School administrators must:

- Offer supportive measures to the person who experienced the harm. The Department of Education defines supportive measures as reasonably available measures that are (1) non-disciplinary, (2) non-punitive, (3) individualized and are (4) designed to restore or preserve equal access to the education program or activity.⁷ These measures cannot unreasonably burden one party. The goal of supportive measures is to protect the safety of all parties or the safety of the school's educational environment or deter sexual harassment. When considering options for supportive measures, the school must consider the wishes of the person who experienced the harm. Supportive measures may include:
 - Mutual restrictions on contact, such as no contact directives;

- Safety planning, such as designating specific hallways, entrances, and bathrooms to reduce the likelihood of contact;
 - Academic accommodations or assistance, such as options for extended deadlines or the opportunity to take exams in a separate space; and/or
 - Additional supports in the form of time with a school adjustment counselor, the ability to leave classes a few minutes early to avoid crowded hallways, classroom seating changes, or other increased supervision in spaces outside of the classroom (e.g. lunch rooms, recess, PE, etc.).
- Explain to the person who has been harmed that the school will investigate if the person wishes. Remember, this investigation is separate from any investigation by law enforcement.
 - If the person who was harmed decides they do not want to participate in an investigation by the district, the Title IX Coordinator must assess whether they will investigate regardless.

Please also note that all requirements of the Title IX rule must be implemented by August 14, 2020. **These materials do not constitute legal advice.**

In the midst of so much change, we encourage you to remember that Title IX was enacted to ensure that everyone is able to fully and equally access their education, regardless of sex. Sexual harassment and sexual assault can disrupt and upend education in a life-altering way for victims. The steps that you take as a district to respond to incidents are critical for cultivating safe and equal educational environments for all students.

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¹ 34 C.F.R. § 106.71(a) (“*Retaliation prohibited*. No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.”).

² 34 C.F.R. § 106.44(a) (“‘education program or activity’ includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the

sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.”).

³ Dep’t of Educ., Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, pmb. at 962 (May 22, 2020), www.federalregister.gov/d/2020-07057. (“The § 106.45 grievance process obligates recipients to investigate and adjudicate allegations of sexual harassment for Title IX purposes; the Department does not have authority to require recipients to investigate and adjudicate misconduct that is not covered under Title IX, nor to preclude a recipient from handling misconduct that does not implicate Title IX in the manner the recipient deems fit.”).

⁴34 C.F.R. § 106.45(b)(10) (“All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.”).

⁵ 34 C.F.R. § 106.30(a) (defining "actual knowledge" as "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 or secondary school.”).

⁶ 34 C.F.R. § 106.44(a) requires a recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States to respond promptly in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances.

⁷ 34 C.F.R. § 106.30.