

Title IX in Detail

When people speak about Title IX they are referring to 20 U.S.C. § 1681(a), which says:

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.

Essentially, Title IX prohibits sex discrimination in educational institutions that receive federal funding. While Title IX is a very short statute, Supreme Court decisions and guidance from the U.S. Department of Education have given it a broad scope. For example, sex discrimination includes sexual harassment and sexual violence since it creates a hostile educational environment. Under Title IX, schools are legally required to respond and remedy hostile educational environments and failure to do so is a violation that means a school could risk losing its federal funding.

To understand the specific requirements of Title IX, schools must look to guidance materials from the U.S. Department of Education. Recently, the 2011 Title IX Guidance, known as the “Dear Colleague Letter” (DCL), discussed the obligations schools have to address campus sexual violence. While the DCL is not law, it tells schools how the Department will review and enforce Title IX complaints.

The 2011 DCL focuses on how sexual harassment and violence creates a hostile educational environment in violation of Title IX when it is serious enough to interfere with a student’s ability to learn or participate in educational or extracurricular activities. One single instance of sexual violence is sufficient to qualify as creating a hostile educational environment.

Published Notice of Nondiscrimination

Under Title IX, schools must disseminate a notice of nondiscrimination. This notice does not have to specify that sexual harassment and violence are likewise prohibited, but the U.S. Department of Education (ED) recommends that schools do, since a notice that makes it unclear may qualify as a violation of Title IX. This notice is likely available in your student handbook or code of conduct documents and our Annual Notice of Rights and Responsibilities (Discipline Policy and Procedures).

The Department of Education & Office of Civil Rights recommends schools:

- Publish this policy online and have it available in print across campus so that school members may understand its purpose and utility
- Include enough detail in the policy so that members of the community can realize sexual harassment and sexual violence are prohibited forms of sex discrimination

School Site - Title IX Coordinator

The DCL requires every educational institution receiving federal funding to have a Title IX Coordinator. The contact information (name/title, office address, telephone number, email address) of the Coordinator should be available both in your school’s nondiscrimination notice/publications. Both

victims and third parties should contact the Coordinator to report incidents of sex discrimination, sexual harassment, or sexual violence.

The Title IX Coordinator ensures schools are compliant with Title IX, coordinates the investigation and disciplinary process, and looks for patterns or systematic problems with compliance to ensure schools fulfill all their federal obligations.

Clear grievance procedures for sexual discrimination

Schools are required and publish a grievance procedure (CVUSD AR 5145.7) outlining the complaint, investigation, and disciplinary process for addressing sex discrimination, sexual harassment, and sexual violence occurring within educational programs. This process should address discrimination perpetrated by students, employees, or third parties. Additionally, school personnel and law enforcement personnel must notify victims of their rights to use the school's grievance procedure in addition to being able to file a criminal complaint.

This grievance procedure requires the school's process be "prompt and equitable," meaning it must be a timely response to discrimination and provide both parties equivalent rights during the disciplinary process rather than having one-sided due process.

While sexual harassment complaints may be resolved through informal mechanisms, such as mediation, students are not required to use such a process. Mediation is not appropriate for sexual violence complaints.

Properly trained personnel to address sexual violence?

School personnel should be trained on procedures relating to identification and reporting sexual harassment and violence.

Schools are required to be prompt when receiving a complaint of sex discrimination, sexual harassment, or sexual violence in order to remedy any hostile educational environment created by such behaviors. A simultaneous police investigation does not remove a school's responsibility to resolve a complaint under Title IX. While a school may delay its response to accommodate a police investigation, the Department of Education suggests only three to 10 days is sufficient for police to gather evidence. Schools that delay the Title IX complaint process unreasonably are in violation of Title IX.

Reporting options

Schools must notify victims of their right to report to police and facilitate that process if desired by the victim. Victims also have the right not to report to the police.

Regardless of a victim's choice to report to the police, a victim may use a school's grievance procedure to address sexual harassment or sexual violence or merely seek accommodations. When reasonable, schools must accommodate a victim on campus to remedy a hostile environment on a school's campus. This means schools may change academic or extracurricular schedules to prevent an ongoing hostile education environment or put in place safety measures, such as a no contact directive or facilitate a student obtaining a restraining order. The burden of accommodations or safety measures should not be solely placed on the victim, as this may be seen as a violation of Title IX.

Appropriate standard of evidence for disciplinary action

Since Title IX is a federal civil right, the appropriate standard of evidence is a “preponderance of the evidence.” This standard of evidence means that a hearing must determine whether a complaint of sex discrimination is “more likely than not” to have occurred or 51% likely to have occurred. This standard applies for all complaints of sex discrimination, including sexual harassment and violence, because Title IX outlines standards for school disciplinary processes — not criminal complaints.

An “equitable” Title IX complaint process

Under Title IX, both the accuser and accused have equal rights, such as the right to:

- Present evidence or have witnesses speak on their behalf
- Provided an opportunity to present their testimony
- Receive the investigation findings in writing at the same time
- Have the right to appeal a final decision
- The DCL warns schools creating a disciplinary system requiring the accused and accuser to directly interact may be re-traumatizing and discourages this practice

Provisions to protect Title IX complainants against retaliation

As a federal civil right, Title IX automatically protects any individual who reports sex discrimination, sexual harassment, or sexual violence against retaliation. This means employees and third party reports are protected along with reporting victims from any adverse consequence, harassment, intimidation, or discrimination that is causally related to reporting sex discrimination under Title IX. Schools must protect against other employees or students retaliating against a reporter when it “knows or should know” about the retaliatory harassment or behavior.

Address sex discrimination creating a hostile environment for others?

In addition to being obligated to victims, schools must address hostile educational environments created by sex discrimination, sexual harassment, and sexual violence school-wide. Addressing a hostile environment means remedying a current situation, addressing its effects, and preventing its recurrence in the future. Schools may meet this obligation through providing educational and awareness programming on sexual harassment or discrimination.

How can I enforce Title IX at my school?

Students and other concerned third parties have the right to report sex discrimination, sexual harassment, and sexual violence to a school. Schools who fail to appropriately respond can suffer consequences under Title IX, such as the loss of federal funding, a non-compliance finding, a voluntary resolution agreement, or a lawsuit. The U.S. Department of Education accepts Title IX complaints, which can be reported to OCR@ed.gov.

Know Your IX

Title IX in Detail - <http://knowyourix.org/title-ix/title-ix-in-detail/>

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