

The 2024 Title IX Regulations

New Obligations & Processes



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WHAT IS
TITLE IX?

Prohibits Sex-Based Discrimination



Title IX is a federal law that prohibits discrimination based on sex.

Prohibits Sex-Based Discrimination



“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 educational program or activity receiving federal financial assistance.”

Title IX

Quick Facts

**Passed by U.S.
Congress
in 1972.**

**Applies to all
public & private
educational
institutions that
receive Federal
Funds.**

**Applies to all school
district operations,
including academic,
educational,
extracurricular, athletic
and other programs of
the school.**

The New Regulation



Effective **August 1, 2024.**



All incidents occurring **on or after August 1, 2024,** are subject to new regulations.



All incidents occurring **prior to August 1, 2024,** are subject to 2020 regulations (i.e., the process we're currently using).

Major Themes

- New regulations cover more conduct, including sexual orientation and gender identity.
- More flexible, less document-heavy investigation process
- More responsibilities for the Title IX Coordinator
- Two processes for higher education institutions
- Protections for pregnant students and employees
- Lots of training for staff



The Basics

Coordinator

**Policies
& Procedures**

**Section
106.8**

Notice of Nondiscrimination

Coordinator

Designate at least one employee to coordinate compliance with Title IX.

Section 106.8

Policies & Procedures

Adopt, publish, and implement nondiscrimination policy & grievance procedure.

Notice of Nondiscrimination

Provide notice of nondiscrimination to students, parents/guardians/other authorized representatives, employees, etc.



Title IX Team

Current Rules

- TIX-C, investigator, and IR facilitator can be the same person.
- Decisionmaker must be different.
- Appellate decisionmaker must be different.

New Rules

- The TIX-C, investigator *and* decisionmaker can be the **same person**.
- Appellate decisionmaker must be different.
- IR facilitator must be different.

Title IX Coordinator – More Responsibilities

- Provide notice to pregnant students of obligation to prevent sex discrimination and ensure equal access, including coordinating district's responsibilities to pregnant students.
- Monitor for barriers to reporting and take steps to address such barriers.
- Take steps to promptly and effectively end sex discrimination and prevent its recurrence, including:
 - Treat complainant and respondent equitably
 - Offer and coordinate supportive measures
 - Notify complainant of grievance procedures
 - Initiate grievance procedures or informal resolution (IR) process
 - Consult with IDEA or 504 teams



Title IX Training

All Employees
must be trained
annually on:

- District's obligation to address sex discrimination in programs and activities
- Scope of conduct constituting sex discrimination, including sex-based harassment
- All notification and information requirements under 106.40(b)(2) and 106.44

Must be able to verify that employee completed training.

Title IX Training

Title IX coordinators/designees

Investigators

Decisionmakers

IR facilitators

Others responsible for implementing grievance procedures or modifying/terminating supportive measures

Quite similar to current training requirements.



What conduct is covered
under the regulations?

Sex Discrimination

*The rules apply to **ALL** reports of sex discrimination or harassment: different treatment, disparate impact, failure to accommodate (pregnancy) & retaliation.*

Sex Discrimination Includes:

Different Treatment

- Sex Stereotypes
- Sex Characteristics
- Pregnancy or Related Conditions
- Sexual Orientation
- Gender Identity

Sex-Based Harassment

- *Quid pro quo*
- Hostile Environment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

Sexual Harassment



Conduct on the basis of sex that satisfies one or more of the following:

1. Quid Pro Quo
2. Hostile Environment
3. Sexual Assault, Dating Violence, Domestic Violence or Stalking

1 ***Quid Pro Quo***

2 **Hostile Environment**

3 **Sexual Assault, Dating Violence,
Domestic Violence or Stalking**

1

Quid Pro Quo

1. An employee, agent, or other person authorized by the recipient to provide an aid, benefit or service under the recipient's education program or activity ***explicitly or impliedly*** conditioning the provision of such aid, benefit, or service on a person's participation in unwelcome sexual conduct.

1 ***Quid Pro Quo***

2 **Hostile Environment**

3 **Sexual Assault, Dating Violence,
Domestic Violence or Stalking**

2 Hostile Environment



2

Hostile Environment

Current Rules

Unwelcome conduct determined by a **reasonable person** to be so **severe, pervasive and objectively offensive** that it denies a person equal access to the recipient's education programs or activities.

New Rules

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 (i.e., creates a hostile environment).

1 ***Quid Pro Quo***

2 **Hostile Environment**

3 **Sexual Assault, Dating Violence,
Domestic Violence or Stalking**

3

Sexual Assault, Dating Violence, Domestic Violence or Stalking

3. “Sexual assault” as defined in 20 U.S.C 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

Gender Identity Discrimination

106.31 states as follows: Adopting or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

This may conflict with state laws requiring restroom and locker room use on the basis of biological sex. Expect litigation regarding this issue.



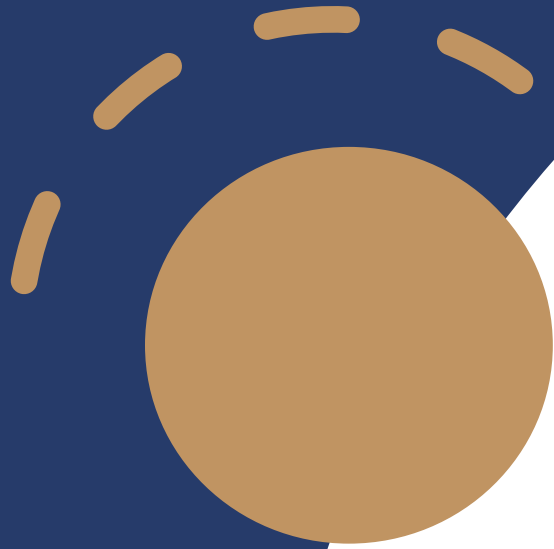
Jurisdiction

Conduct that is subject to the district's disciplinary authority.

A recipient has an obligation to address a sex-based, hostile environment under its education program or activity, ***even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity*** or outside the United States.

106.11





When is a school district required to respond?

In other words, when does a district have “notice”?

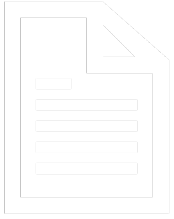


Institutional Notice (K-12)

All recipients with knowledge of conduct that **reasonably may constitute sex discrimination** in its education program or activity **must respond promptly and effectively**, which requires complying with the grievance procedures listed in the new regulations.

106.44(a)





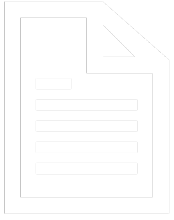
Notice (K-12)

Any employee, except confidential employees, must notify the Title IX coordinator when they have information about conduct that reasonably may constitute sex discrimination under Title IX.

- The institution does not have notice when the only employee to have actual knowledge of the conduct is the employee-complainant.

106.44(c)(1)





Notice (Higher Ed)

If an employee has ***information about conduct that reasonably may constitute sex discrimination*** under Title IX, they must take the following actions based on their employee status:

Notice (Higher Ed)

Position	Learned from	TIX-C Notification	Give contact Info for TIX-C
Confidential Employees	Student/Employee	✗	✓
Authority to institute corrective measures	Student/Employee	✓	✗
Administrative Leadership, Teaching, & Learning	Student/Employee	✓	✗
All other employees	Student/Employee	Choose Either	



Related **Reporting**

Law Enforcement & DHS Reports



If the allegations could constitute a crime or child abuse, **immediately** contact law enforcement and/or DHS.

State Department of Education Reports



State law states that, if a superintendent's recommendation to dismiss a teacher includes grounds that could form the basis of criminal charges sufficient to result in the denial or revocation of a certificate, a copy of the recommendation shall also be forwarded to the State Board of Education after the completion of due process procedures or after the teacher resigns (70 O.S. 6-101.25).



Investigation Process

Major Stages of an Investigation

1 EVALUATION

Determination of whether to dismiss or investigate.

2 INVESTIGATION

Including credibility assessments.

3 DETERMINATION

4 APPEAL, IF ANY



New regulations will change the process for all K-12 and many higher ed investigations.

New rules:

**No longer
require written
complaints**

**Less burdensome
information
exchange
obligations**

**No longer require
written notices in
many instances**





New regulations create two processes for higher ed (career tech).

Two processes:

1. Process 1: If the complaint is any type of discrimination but sexual harassment, the process will be as described above.
2. Process 2: If the complaint is sexual harassment, it will be similar to the current process, although hearings will be optional.

Appeals – K-12 and Process 1

Must offer an appeal process that, at a minimum, is the same as it offers in all other comparable proceedings, if any, including proceedings relating to other discrimination complaints.



Appeals – Process 2

Must offer appeal all parties appeal on the following bases:

- Procedural irregularity that would change the determination of whether harassment occurred.
- New evidence that would change the outcome of the matter, which was not reasonably available at the time the determination or dismissal was made.
- TIX-C, investigator or decisionmaker had a conflict of interest or bias.

**May offer on other basis if offered to all parties equally.*



Pregnancy or Related Conditions

Students & Employees

Students

Nondiscrimination & Information

A school district must not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions.

Employees must provide TIX-C's contact information and inform them that the TIX-C is obligated to prevent sex discrimination and ensure equal access.



Students

Accommodations

District must provide reasonable accommodations to policies and procedures:

- Cannot fundamentally alter programs and activities
- Student may accept or decline each accommodation
- Cannot require documentation unless *necessary and reasonable* to determine reasonable accommodations or take additional actions.

Students

Other Obligations

- Must provide voluntary access to separate and comparable portion of the education program or activity
- Voluntary leaves of absence
- Lactation space other than a restroom



Employees

Nondiscrimination

A district must not discriminate against any employee or applicant for employment on the basis of current, potential, or past pregnancy or related condition.



Employees

Comparable Treatment to Temporary Medical Conditions

Must treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes, including:

- Commencement, duration and extensions of leave
- Payment of disability income
- Accrual of seniority and any other benefit or service
- Reinstatement
- Under any fringe benefit offered to employees by virtue of employment



Employees

Other Obligations

- Voluntary leaves of absence
- Lactation time and space other than a restroom



Challenges to the New Regulations

Litigation

Overall

At least 9 federal lawsuits filed with roughly 27 states acting as plaintiffs.

Oklahoma

- Oklahoma Attorney General's Office
- Oklahoma State Department of Education



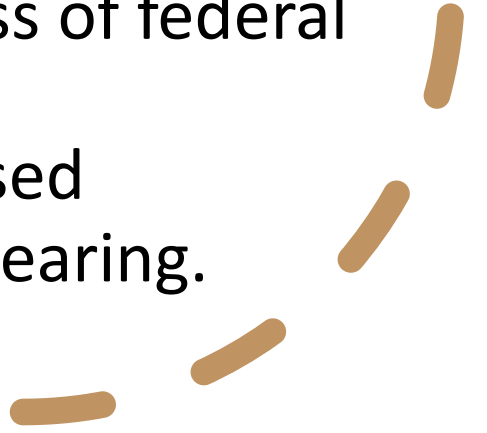
Common Arguments

- Exceed statutory authority = adding gender identity to definition of sex goes beyond the law
- Violates Spending Clause = not “unambiguously clear”, will require institutions to violate constitutional rights, violates state sovereignty, etc.
- Arbitrary and capricious = flawed decision-making process, inconsistent reasoning, etc.
- Unlawful use of legislative power = makes decisions reserved to legislature
- Violates 1st Amendment = broad hostile environment definition and forced use of pronouns

OK Attorney General and OSDE

The OK AG argued, among other things, that adding gender identity to the definition of sex fundamentally altered the meaning of sex discrimination under Title IX, and that the expansive definition of hostile environment would encompass protected speech.

The OSDE argued, among other things, that the regulations place states in the position of ignoring biological sex or facing loss of federal funding, and that they rescinded constitutional protections to accused students, such as access to a fair hearing.



What to do by August 1, 2024

- Obtain a copy of the updated Title IX policy and prepare for adoption (districts may want to wait on actual board adoption until we have a better idea on the affects of possible legal challenges)
- Ensure Title IX structure complies with updated regulations
- Prepare to implement notices that are required on website and in handbooks, catalogs, bulletins, announcements, and application forms.
- Provide required training to all employees, as applicable to each employees' role.

Have Title IX Questions?



Contact Me:

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Thank you!

