



COLORADO
Department of Education





Title IX of the Education Amendments of 1972

“No person in the U.S. 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”



Title IX Interpretation through Rule & Guidance



Sex-Based Discrimination

Prevent & Respond to Sex-Based Discrimination

- Athletic Opportunities and Benefits
- Pregnant or Parenting Students
- Single Sex Classes and Schools
- STEM
- Gender-Based Harassment & Bullying

Prevent & Respond to Sexual Harassment



Gender-Based Harassment and Bullying

Gender-based harassment is unwelcome conduct based on an individual's actual or perceived sex, gender identity, or nonconformity with sex stereotypes. Gender-based harassment may include:

- Acts of verbal, nonverbal or physical aggression.
- Intimidation or hostility based on sex or sex-stereotyping or failure to conform to perceived sex or sex-stereotypes.
- Such acts are considered to be gender-based harassment **even if they do not involve conduct of a sexual nature** because the conduct is sex-based.
- Title IX prohibits sexual harassment and gender-based harassment of all students, regardless of the sex of the harasser or the target and regardless of the actual or perceived sexual orientation or gender identity of the harasser or the target.



New Definition of Sexual Harassment



Sexual Harassment

1. **Quid pro quo** by an employee **OR**
2. Davis Court: unwelcome conduct that a **reasonable person** would determine is “**so severe, pervasive and objectively offensive**” that it effectively **denies** a person **equal access to education OR**
3. **Sexual assault as defined in the Clery Act**, as amended by the Violence Against Women Act, **a single instance of:**
 - **dating violence**
 - **domestic violence**
 - **stalking**

Sexual Harassment can include, but is not limited to:

Sex-oriented verbal "kidding," abuse or harassment.

Pressure for sexual activity.

Repeated remarks to a person with sexual implications.

Unwelcome touching, such as patting, pinching or constant brushing against another's body.

Suggesting or demanding sexual involvement, accompanied by implied or explicit threats concerning one's grades, employment status or similar personal concerns.

Sexual violence.





Big Picture Shifts

- Focus on addressing sexual misconduct through specific procedures
- Emphasis on due process and impartiality

Terminology

■ Complainant

- an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- parents and guardians do not become complainants (or respondents)

■ Respondent

- an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

■ Formal complaint

- a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment

■ Supportive measures

- individualized services reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

Terminology



■ Recipient

- Elementary and secondary schools, as well as post secondary institutions that receive federal financial assistance

■ Informal resolutions

- Must start with formal grievance process
- Parties voluntarily participate and provide written consent
- Consent can be withdrawn at any time (either party can choose to go back to a formal process)
- Informal resolution may end in an agreement under which the respondent agrees to a disciplinary sanction without the recipient completing a formal grievance process
- Informal processes are **not** permitted in employee to student allegations

■ Advisor of Choice

- Assists a party in “navigating the process”
- May be, but does not have to be, an attorney

Who is covered?

- The complainant **MUST** be a current student, someone who is attempting to enroll, or the Title IX Coordinator
 - If the respondent is no longer enrolled in the school, the school/district may end its investigation
 - If the respondent is no longer an employee of the school/district, the school/district may end its investigation
- If the complainant withdraws the complaint, the school may end its investigation
 - The Title IX Coordinator can continue the investigation if the complaint is severe, and if it makes sense to do so
 - Ex: you have multiple complaints against the same student
 - Ex: the complainant withdrew the complaint out of fear

Actual Knowledge

New Definition of Actual Knowledge

1. A student may report to any employee of an elementary or secondary school
2. Students do not need to report to a specific employee such as a Title IX Coordinator
3. If an employee observes sexual harassment

*** All K-12 employees are obligated to report and considered mandatory reporters under Title IX**

New Definition of Education Program or Activity

1. “all of the operations of” a recipient **OR**
2. “locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs” **OR**
3. Incidents that occur off campus, if any of the above conditions are met

*** Must be in the United States**

What About Off-Campus Activities?

- “Off campus” does not automatically mean that the incident occurred outside the recipient’s education program or activity.
- In situations involving some allegations of conduct that occurred in an education program or activity, and some allegations of conduct that did not, the recipient must investigate the allegations of conduct that occurred in the recipient’s education program or activity.
- Recipient can also choose to address allegations of conduct outside the recipient’s education program or activity.

Example



If a student is sexually assaulted outside of an education program or activity but subsequently suffers Title IX sexual harassment in an education program or activity, then these final regulations apply to the latter act of sexual harassment, and the recipient may choose to address the prior assault through its own code of conduct.

A map of the United States with a light blue background. The landmasses are colored in a light tan or yellowish hue. State boundaries are outlined in a thin black line. The Great Lakes region is highlighted in a darker blue. The text "Must be in the United States" is written in a bold, black, italicized serif font, centered horizontally across the middle of the map. In the bottom left corner, there is an inset map of Alaska, and in the bottom right corner, there is an inset map of the Hawaiian Islands, both showing the same color scheme and state boundaries as the main map.

Must be in the United States

What about study abroad programs?

The Department agrees with the rationale applied by a Federal district court in *Phillips v. St. George's University* that regardless of whether a study abroad program is part of a recipient's education program or activity, Title IX does not have extraterritorial application.

- Schools may face difficulties interviewing witnesses and gathering evidence outside the US.

*** However, under Title IX, the school can offer supportive measures for incidents that occur outside the United States**

*** And, a school can choose to address incidents that occur outside the United States through their own student conduct policy**





What About Cyber-Bullying?

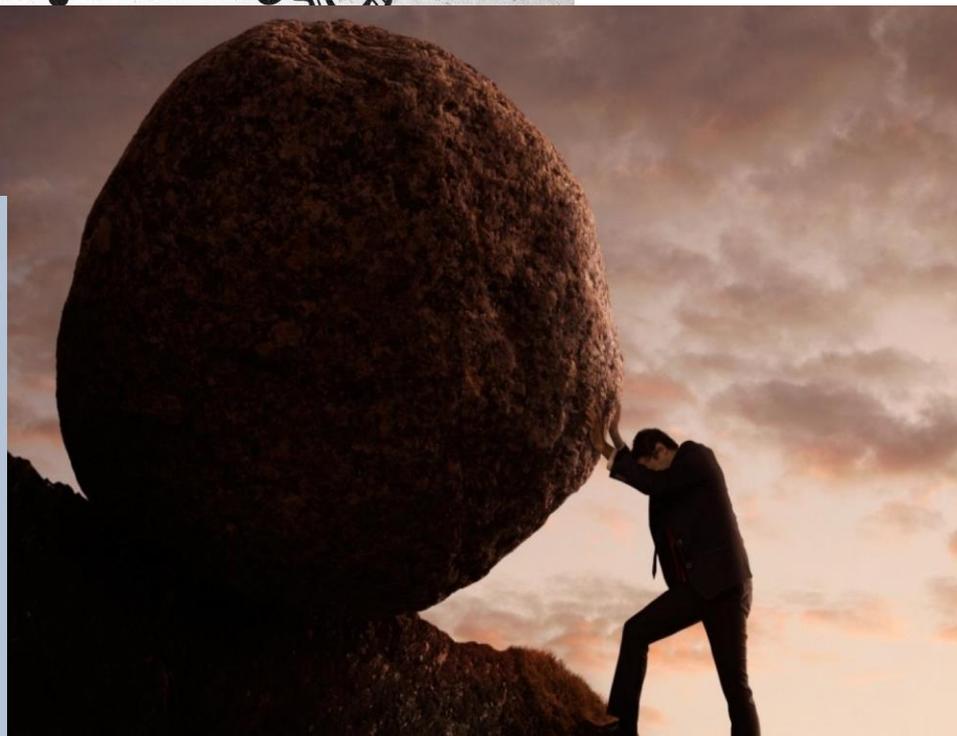
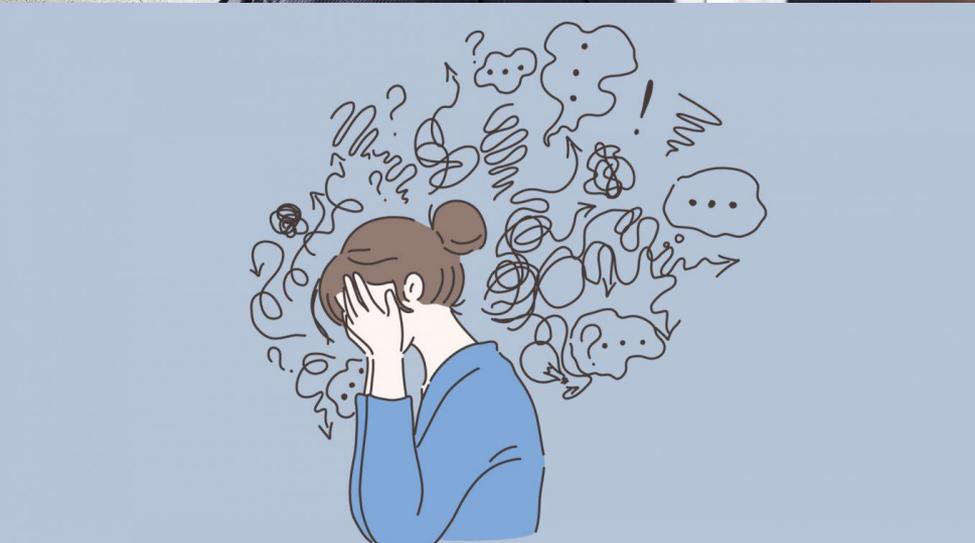
Online bullying may have repercussions that could raise to the level of Title IX.

Does the harassment fall under the school/district operations/jurisdiction?

Ask yourself these questions?

- Is harassment occurring during class time?
- Is the harassment occurring over a school designated platform or website?
- Is the harassment occurring using school designated software?
- Is the device being used owned by the school?
- Is the harassment occurring using school Wi-Fi?
- Is the harassment occurring using a school email address?
- Is the harassment occurring while in the process of completing a school assignment?



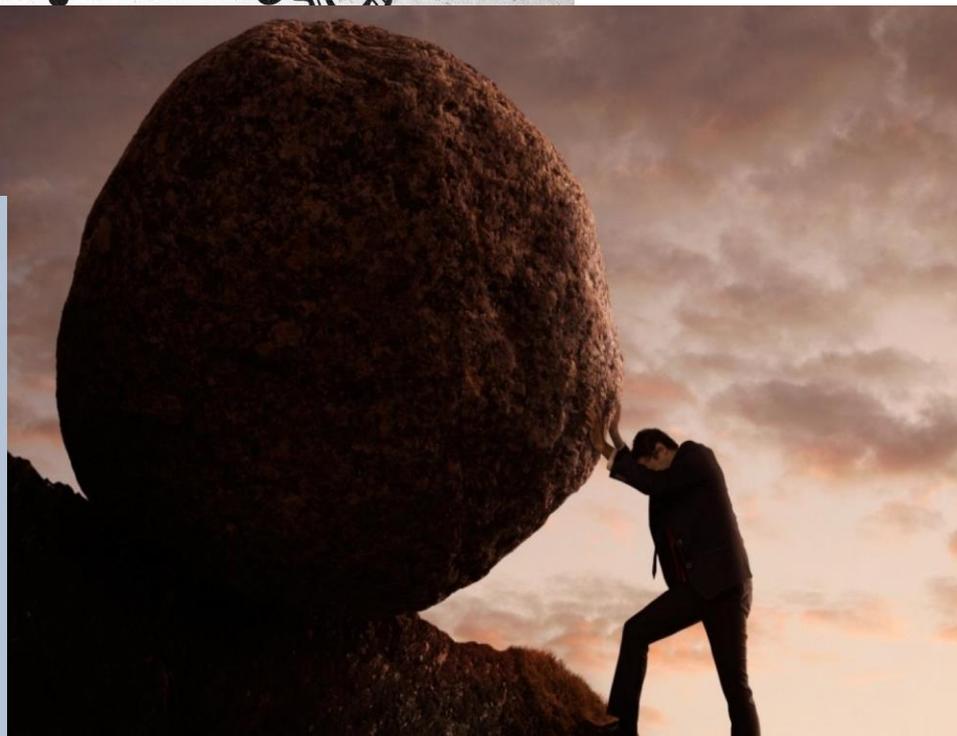
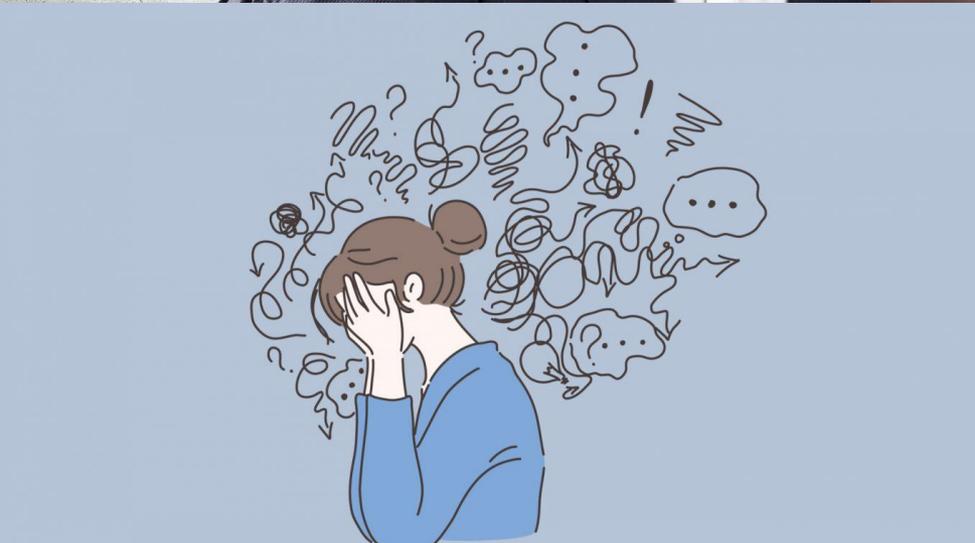


Does the cyber-bullying meet the definition of sexual harassment?

- Is the harassment so severe, pervasive, and objectively offensive that it is affecting the complainant's ability to engage in school?

*** Even if a school/district is not required to address certain misconduct under Title IX, these final regulations allow a recipient to address such misconduct under its own code of conduct**





Educate, Educate, Educate Model Well, and Address Immediately Eyes and Ears from Everyone



Prevent



Investigate



STOP



Remedy

Title IX Roles

The Role of All K-12 Staff



Every school employee is deemed a “responsible employee.” If a responsible employee is aware of sexual misconduct, then a school has “actual knowledge,” and is therefore obligated to respond.

This includes ALL:

- Teachers, paraprofessionals, cafeteria workers, bus drivers, receptionists, administrative assistants, nurses, counselors, custodial staff
- Collaborators, contractors, outside trainers
- School Resource Officers
- EVERYONE!!!!



- Final regulations require a “trained investigator” to objectively evaluate the evidence and prepare an investigative report, summarizing relevant evidence
- A recipient may outsource to professionally trained investigators
- The Office for Civil Rights (OCR) does not elaborate on what it means for an investigator to be “trained”
- Investigator *can* be the Title IX Coordinator, but possibly should not be

The Role of the Investigator



A large billboard on a highway overpass. The billboard is white with black text. The text reads "Required Notifications and Postings". The billboard is supported by a metal structure. In the background, there are highway overpasses, streetlights, and a clear blue sky with some clouds.

Required Notifications and Postings

Notification of Title IX Coordinator

Must notify:

- Applicants for admission
- Applicants for employment
- Students
- Parents or legal guardians of elementary and secondary school students
- Employees
- All unions or professional organizations holding collective bargaining or professional agreements with the recipient

of the **name** or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator

AND

that “any person” may report sex discrimination in person or by mail, phone, or e-mail, verbally or in writing, at any time 24/7

Notification and Dissemination of Nondiscrimination Policy

Must notify all applicants for admission and employment that:

- The school/district does not discriminate on the basis of sex
- This is required under Title IX not to discriminate on the basis of sex
- This requirement extends to admissions and employment
- Inquiries may be referred to the Title IX Coordinator, to the Office for Civil Rights, or to both

Must include in all:

- Catalogs
- Handbooks

*** And on the website**





106.45(b)(10)(D) 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.

A Recipient's Obligation to Respond to Complaints

- A school must respond promptly in a manner that is “**not deliberately indifferent**” or “**clearly unreasonable in light of the known circumstances.**”
- **The Title IX Coordinator must promptly contact the complainant confidentially to discuss the availability of supportive measures**
 - consider the complainant's wishes with respect to supportive measures
 - inform the complainant of the availability of supportive measures with or without the filing of a formal complaint
 - explain to the complainant the process for filing a formal complaint
- Schools must follow a grievance process that complies with the Final Rule before imposing any disciplinary sanctions or other actions that are not supportive measures, against a respondent.
- A school must investigate sexual harassment allegations in any formal complaint



Supportive Measures



What

- Non-disciplinary
- Non-punitive
- Individualized
- As private as possible

Offered

- To both parties
- As reasonably available
- Free of charge

When

- Promptly
- No formal report required

*** Must be documented**



Examples of Supportive Measures

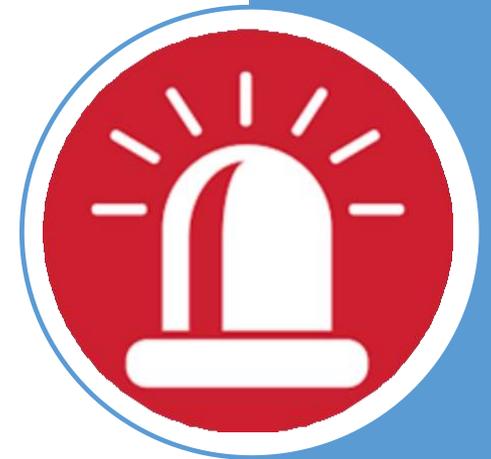
- Counseling
- Increased supervision
- Course related adjustments
 - opportunities to retake classes or exams
 - adjusting an academic transcript
 - deadline extensions
- Schedule changes

A supportive measure that removes the respondent from an activity would likely be considered punitive, except for “emergency removals” for students and “administrative leave” for employees

Emergency Removals

106.44 (c): Nothing in this part precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient:

- Undertakes an individualized safety and risk analysis
- Determines an immediate threat
- Provides respondent with notice and an opportunity to challenge the decision following the removal

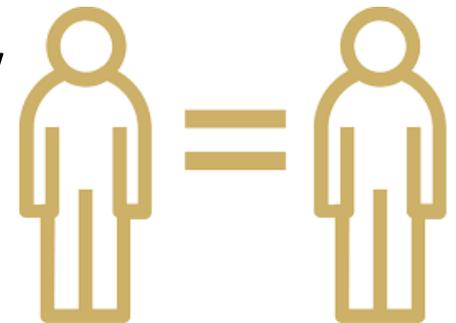




Rights and
Procedures to
Protect Those
Rights

The Rights of Both Parties

- Prompt, effective, and unbiased process
- Right to an advisor, offered to both parties
- Supportive measures offered to both parties
- Equitable treatment for both parties
- Impartial investigation
- Presumption of innocence
- Due process
- Equal access to review evidence
- Impartial decision maker
- Confidentiality, to the extent permitted by law
- Right to appeals, offered to both parties
- Protection from retaliation



Standard of Evidence

- **Must use the same standard of evidence for complaints against students as it does for complaints against employees**
 - Requiring a higher standard of evidence for a student's complaint against an employee than a student's complaint against another student is "unfair," especially due to the power differential between student and employee.
- **Must state in grievance process and in written notice** whether the standard of evidence used is the preponderance of the evidence standard or the clear and convincing standard

*** Must apply the same standard of evidence to all formal complaints of sexual harassment**

Preponderance
of the
Evidence

Clear and
Convincing

Written Determination Must Include

- Allegations
- Steps followed
- Determination
- Findings supporting determination
- Conclusions and statements of rationale for the determination of each allegation
- How to file an appeal
- Sanctions and remedies
- Retaliation prohibited



Investigative Report

-
- Must fairly summarize the relevant evidence
 - Must be provided to both parties and advisors at least 10 days before a hearing or other determination of responsibility



Remedies

- Must end the discrimination
- Must prevent its recurrence
- Must restore or preserve equal access to the educational program or activity
- Must remedy the effects on the victim and the educational community
- Must protect the victim from retaliation



When Title IX and Law Enforcement Intersect

- The criminal justice system and the Title IX grievance process serve distinct purposes
- School grievance process occurs independently of any criminal investigation that may occur concurrently
- School grievance process must be concluded in a “reasonably prompt” time frame
- Flexibility to temporarily delay the grievance process due to concurrent law enforcement activity
- Only permits “temporary” “brief” delays or “limited” extensions of time frames
- Must have “good cause”
- Delays based only on law enforcement request or due to a memorandum of understanding with law enforcement are not permitted
- Recipients’ obligations under Title IX are independent of recipients’ obligations to cooperate or coordinate with law enforcement
- Any delay requires written notice to the parties and an explanation for the delay or extension
- Still implement supportive measures while grievance procedures are pending.





Retaliation is 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.”



“...charging an individual with a code of conduct violation that does not involve sexual harassment but arise out of the same fact or circumstances as sexual harassment allegations, for the purpose of interfering with rights under Title IX, constitutes retaliation.”

*** A complaint of retaliation re-initiates the grievance procedures.**