

TITLE IX TRAINING FOR FACILITY SCHOOLS

SESSION 1: SEPTEMBER 1, 2020 OR SEPTEMBER 22, 2020

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SESSION 1: TODAY'S ROADMAP



1. (Re)introduction to Title IX
2. Requirement: Dissemination of policy (statement) of nondiscrimination
3. Requirement: Identification of a Title IX Coordinator



(RE)INTRODUCTION TO TITLE IX

TITLE IX:THE LAW

“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.**”

- Title IX of the Education Amendments of 1972; [20 U.S.C. § 1681\(a\)](#)
- The reach of Title IX
- Our focus: sexual harassment

TITLE IX:THE (NEW!) REGULATIONS ("C.F.R.")



- DOE issues regulations on Title IX, and its Office of Civil Rights (OCR) and DOJ enforce them
- Have the **force of law**
- New regulations! (and a 2000-page preamble)
 - Released in May 2020, followed by a period of public notice and comment
 - More than 124,000 public comments received
 - August 14, 2020: new regulations went into effect
 - Pending litigation
 - Example: *Commonwealth of Pennsylvania v. DeVos*, 1:20-cv-01468 (D.C. Cir.) filed June 4, 2020 by coalition of 18 state attorneys general (including Colorado)

TITLE IX:THE POLICY GUIDANCE

- Issued by DOE's OCR
 - E.g., the 2015 “Dear Colleague” letter on a Title IX Coordinator's responsibilities
- Do **NOT** have the force and effect of law; they reflect DOE's “current thinking” on a topic
- More likely to change based on an administration's politics
 - E.g., Secretary DeVos rescinded 2011 policy guidance on Title IX from the Obama administration, including a “Dear Colleague” letter

U.S. Department of
Education



Office for Civil Rights
(OCR)

A SCHOOL'S OBLIGATIONS UNDER TITLE IX: SEXUAL HARASSMENT



Prevent



Investigate



Stop



Remedy

OVERVIEW OF REQUIREMENTS

Big picture for K-12 schools:

- Adopt a Title IX policy
- Identify a Title IX coordinator
- Establish grievance process that complies with regulations
- Train personnel
- Ensure effective documentation procedures are in place
- Publish and publicize Title IX Coordinator's contact information, policy and process, and training materials

WHEN MIGHT A SCHOOL BE LIABLE UNDER TITLE IX?

A fundamental requirement: “A recipient with **actual knowledge of sexual harassment** in an education program or activity of the recipient **against a person** in the United States, must **respond promptly** in a manner that is **not deliberately indifferent.**” 34 C.F.R. 106.44(a)

WHEN MIGHT A SCHOOL BE LIABLE UNDER TITLE IX?

- **Private suits**, likely brought by the complainant or respondent
 - “...It is a recipient's own misconduct—not the sexually harassing behavior of employees, students, or other third parties—that subjects the recipient to liability in a private lawsuit under Title IX.” Preamble to the new regulations, 85 FR 30026-01 at 30038.
- **DOE’s OCR’s investigations** of allegations of schools’ failures to protect students from sexual harassment
 - Where OCR finds concerns or violations, OCR may require schools “to adopt effective anti-harassment policies and procedures, train staff and students, address the incidents in question, and take other steps to restore a nondiscriminatory environment.”
 - Threat: cutting off federal funding

WHY DOES TITLE IX APPLY TO FACILITY SCHOOLS?

“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.**”

- Title IX of the Education Amendments of 1972; [20 U.S.C. § 1681\(a\)](#)
- A facility school is a “recipient” of federal funds

GENERAL RESOURCES

- Your counsel
- CDE's [resource pages](#) and listserv
- Guidance from other sources:
 - [The Association of Title IX Administrators](#)
 - DOE's OCR (E.g., "[Policy Resources](#)"; "[Sexual Harassment Resources](#)")
 - School districts?
 - Each other?

A red, textured stamp of the word "POLICY" in a bold, sans-serif font, tilted diagonally upwards from left to right. The stamp has a distressed, ink-like appearance with some white speckling and a slightly irregular border. It is set against a plain white background.

POLICY

REQUIREMENT: DISSEMINATION OF
POLICY (STATEMENT) OF
NONDISCRIMINATION

SOURCE OF REQUIREMENT:THE REGULATIONS

(b) Dissemination of policy—

- (1) Notification of policy. **Each recipient must notify persons** entitled to a notification under paragraph (a) of this section **that the recipient does not discriminate on the basis of sex** in the education program or activity that it operates, and **that it is required by title IX and this part not to discriminate in such a manner**. Such notification must state that the requirement not to discriminate in the education program or activity extends to admission (unless subpart C of this part does not apply) and employment, and **that inquiries about the application of title IX and this part to such recipient may be referred to the recipient's Title IX Coordinator, to the Assistant Secretary, or both.**
- (2) Publications.
 - (i) Each recipient must prominently display the contact information required to be listed for the Title IX Coordinator under paragraph (a) of this section and the policy described in paragraph (b)(1) of this section **on its website**, if any, and in **each handbook or catalog** that it makes available to persons entitled to a notification under paragraph (a) of this section.
 - (ii) A recipient must not use or distribute a publication stating that the recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by title IX or this part.

CONTENT OF YOUR POLICY



Include:

1. A clear statement of the school's prohibition against sex discrimination, including sexual misconduct
 1. A statement that this prohibition extends to admission and employment
 2. Reference Title IX
2. A statement that inquiries about the application of Title IX may be referred to the school's Title IX Coordinator or DOE's OCR or both

TEMPLATE

[Name of school] does not discriminate on the basis of sex in its programs and activities. Its prohibition against sex discrimination covers students, employees, applications, and other third parties and complies with Title IX.

Persons seeking further information about [name of school]'s non-discrimination should contact:

[Name of school]'s Title IX Coordinator

[Name and contact information]

Inquiries may also be directed to the U.S. Department of Education's Assistant Secretary for Civil Rights at:

U.S. Department of Education

Office for Civil Rights

400 Maryland Avenue, SW

Washington, D.C. 20202-1100

Telephone: 1-800-421-3481

FAX: 202-453-6012

Email: OCR@ed.gov



EXAMPLES

- [Mesa County Valley School District 51](#)
- [Denver Public Schools](#)
- [Lake County School District](#)

GIVING WIDE NOTICE OF YOUR POLICY

- Who needs notice? See 34 C.F.R. 106.8(a)
 - Applicants for admission and employment
 - Students
 - Parents or legal guardians
 - Employees
 - “All unions or professional organizations holding collective bargaining or professional agreements with the recipient.”
- How to give notice? See 34 C.F.R. 106.8(b)(2)
 - Website
 - Student/family handbook
 - Employee handbook

BEST PRACTICES

- Consider a “combined notice”/comprehensive policy that addresses several bases for non-discrimination (e.g., sex, race, color, national origin, sex, disability, language proficiency, or age) and several laws/regulations (e.g., Title VI, Title XI, Section 504, the Age Discrimination Act, etc.)
 - Consider prohibiting discrimination on the basis sexual orientation and gender expression or identity
- Involve stakeholders in drafting process and seek feedback
- Seek input from counsel or another expert in sexual misconduct policies
- Coordinate policy with other policies and procedures, including disciplinary codes
- Create user-friendly materials accessible to all (e.g., students and parents with disabilities; individuals with limited English proficiency)

RESOURCES ON POLICY STATEMENTS

- Guidance from federal government:
 - [DOE's OCR's Notice of Non-Discrimination guidance](#)
 - [2016 White House Task Force to Protect Students from Sexual Assault's Considerations for School District Sexual Misconduct Policies](#)
 - [2014 White House Task Force to Protect Students from Sexual Assault's Checklist for Campus Sexual Misconduct Policies](#)

COORDINATOR

Making Great Things Happen

**REQUIREMENT: IDENTIFICATION
OF TITLE IX COORDINATOR**

Address

Phone

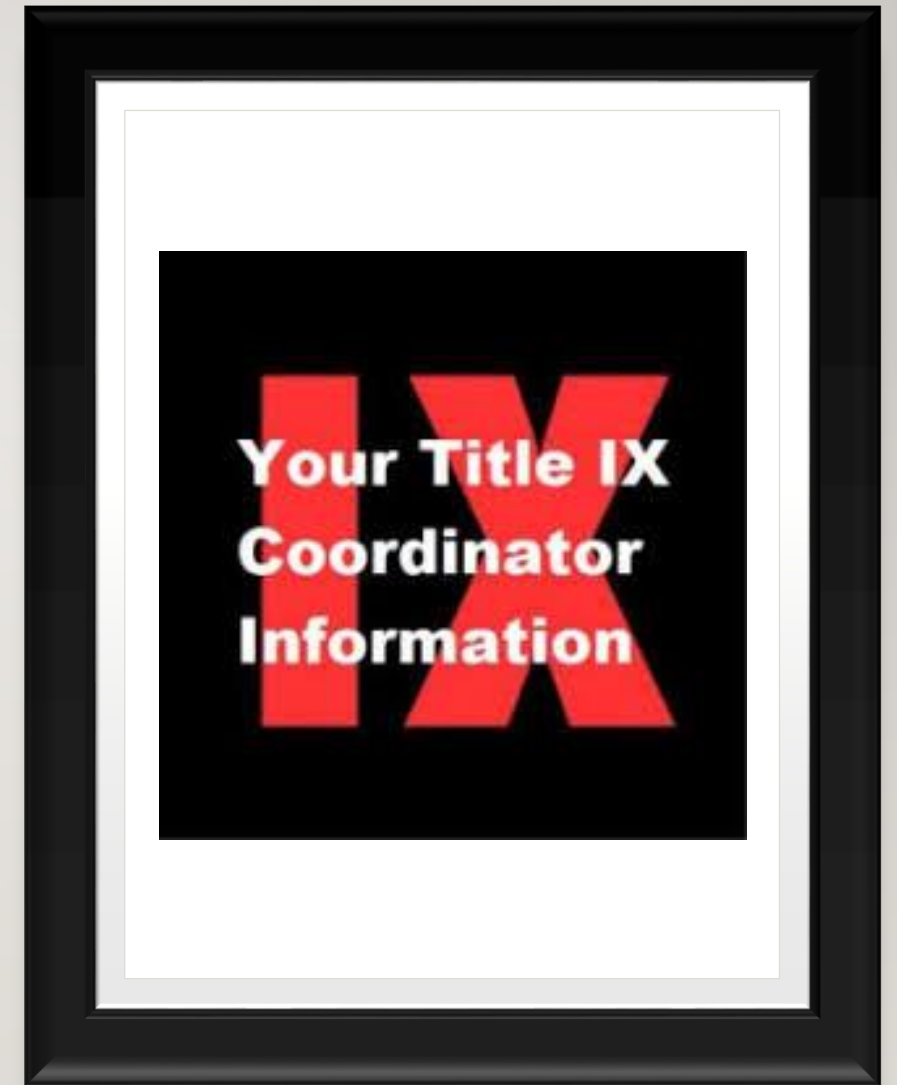
Email

Web

SOURCE OF THE REQUIREMENT: REGULATIONS

“(a) Designation of coordinator. Each recipient must **designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the “Title IX Coordinator.”...**”

34 C.F.R. § 106.8(a)



FACTORS TO CONSIDER: WHO SHOULD BE YOUR COORDINATOR?

Independence

Authority

Position relative to senior leadership

Familiarity with other state and federal laws and regulations

Unlikely to be a full-time job

Can designate multiple coordinators

RESPONSIBILITIES OF TITLE IX COORDINATOR

- Ensure compliance with Title IX
- Know the school's policies and procedures
- Coordinate the school's response to all complaints or notices of sex discrimination
- Stay up to date on Title IX and gender equity issues
- *Not explicitly required but a good idea:* take responsibility school climate regarding sex discrimination

RESOURCES ON AND FOR TITLE IX COORDINATORS

- Guidance from federal government:
 - [DOE's OCR's 2015 Title IX Resource Guide's section on coordinators](#)
 - [DOE's OCR's 2015 Dear Colleague letter on coordinators](#)
- ATIXA's voluminous resources for coordinators
 - [Courses](#)
 - Free [guidance documents](#)
- CDE's listserv for Title IX Coordinators

NEXT STEPS

- ☐ Designate Title IX Coordinator(s)
 - We'll collect this information
- ☐ Draft/revise your non-discrimination policy
- ☐ Post policy on website, in handbooks, etc.
- ☐ Attend our trainings in October—focused on the grievance procedures



What's
Next?

QUESTIONS?

IDEAS FOR HOW WE CAN SUPPORT YOU?

Don't hesitate to contact me! Isabel.broer@coag.gov

