



# Title IX in K-12 Schools—What You Need to Know Now!

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# What Exactly is Title IX?

## **The Statute is succinct:**

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.

## **Background and historical context:**

- From broad application to sports to sexual misconduct
- Role of the Office of Civil Rights



# Why is There a K-12 Focus on Title IX Issues?

**Troubling data** has led to the OCR's February 2020 "Targeted Enforcement Initiative" that will include:

- OCR compliance reviews examining the systems and processes used to handle sexual misconduct complaints;
- A focus on raising awareness within schools and their communities about sexual misconduct and the schools' policies and systems;
- An expectation of improved data gathering by districts, including more detailed collection and reporting on all sexual misconduct complaints against adults; and
- An expectation of data quality reviews, ensuring that schools accurately report and record all complaints and resolutions in a centralized data management system.

## Why is There a K-12 Focus on Title IX Issues?

The Chicago Public Schools Resolution Agreement:

- Key driver of the 2020 Targeted Enforcement Initiative
- Triggered by Chicago Tribune reporting

After a lengthy Compliance Review, the OCR found:

- Widespread harassment and assault in schools and the systemic failure to effectively respond
- That the District's Title IX investigations were inadequate, unreliable, and often conducted by untrained staff
- That there was no coordination of the District's Title IX responsibilities

## Why is There a K-12 Focus on Title IX Issues?

The District entered into a public Resolution Agreement under which it must:

- Provide past complainants with a second, independent review;
- Review the conduct of District employees who failed to appropriately respond to sexual misconduct, and take responsive action;
- Revise its Title IX structure to ensure that the Title IX Coordinator has full authority to effectively coordinate the District's Title IX compliance;
- Develop a comprehensive process for responding to all complaints of sex discrimination and fully document responsive actions taken;
- Ensure impartial investigation of sexual misconduct complaints; and
- Ensure a lack of conflict of interest



# What will you have to do before School Opens in the Fall

## Assess your current situation

- Review your Title IX policy
  - Is the policy easily accessible to the public? Is it on the district's website?
- Determine who is responsible for carrying out the policy
  - Is this person easily identifiable to the public? Are their name, role, and contact information on the district's website?
- Determine your district's current training procedures
- Determine your district's current implementation procedures
  - What are the steps for documentation
  - What are the steps for notification
  - What are the steps for investigation
  - What are the steps for determination
- Determine whether your implementation procedures are any different when an employee is involved

# What will you have to do before School Opens in the Fall

- The new regulations take effect on August 14, 2020
- Prior to that date, schools should take the following action steps:
  1. Identify your Title IX Coordinator and select and gather your project team for creating the compliant Title IX system
  2. Identify relevant policies and map out your current processes
  3. Compare current policies and processes to the new requirements and identify where change is required by August
  4. Conduct training
  5. Publicize your changes



# What will you have to do during school if issues arise?

Where a school has : (1) actual notice; (2) of sexual harassment; (3) in a program or activity; (4) in the U.S., a school must respond:

1. Promptly in a manner that is not deliberately indifferent.
2. Title IX Coordinator:
  - Promptly contact complaining party;
  - Discuss the availability of supportive measures;
  - Inform complainant of availability of supportive measures without filing a formal complaint;
  - Explain the process for filing a formal complaint
3. Response to Formal Complaint
  - School must follow grievance process
4. Procedure for Emergency Removal



# What will you have to do during school if issues arise?

## Grievance Process:

- Investigation
- Hearing
  - K-12 does not have mandatory hearings
  - Schools can have them if decide to do so or required by state law
- Decision
  - Identification of the allegations
  - Description of all procedural steps taken
  - Findings of fact
  - Conclusions and a determination regarding responsibility
  - A rationale for all conclusions
  - Description of disciplinary sanctions, if any
  - Appeal process and grounds

# How will you keep up with the requirements of Title IX and what can happen if you don't

The Final Rule requires extensive training for Title IX coordinators, investigators, decision-makers, and those involved in any informal resolution process on topics including:

- The definition of “sexual harassment”
- The scope of the school’s education “program or activity”
- How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution, as applicable
- How to serve impartially
- Technology to be used at a live hearing, as applicable
- Issues of relevance of questions and evidence, including rape-shield limitations
- Issues of relevance to create an investigative report that fairly summarizes relevant evidence

In addition, all of the training materials used by the school must be posted on the school’s website and publicly available.

# How will you keep up with the requirements of Title IX and what can happen if you don't

- Records:
  - Keep all documents, evidence and recordings for seven years from reports, complaints, hearings and informal resolutions
  - Keep, and make publicly available, all training materials for your Title IX team
  - Keep records of supportive measures
- Penalties:
  - Can include the loss of federal funding
  - Can include an investigation by the DOJ



## Practical Pointers

The stakes are high in these matters. Significant risks include:

- Harm to students
- Damage to educational environment
- Damage to trust and community
- Negative publicity
- Litigation costs and fees

Your Title IX program must simultaneously

- Ensure prompt and effective response to sexual misconduct
- Protects the rights of all parties involved
- Keep records of it all



## Practical Pointers

Compliance with other applicable federal and state laws, as well as contracts and handbooks is also required. Now is the time to:

- Review your district's systems for sexual misconduct prevention, education, response, and data management
- Review handbooks, union contracts, and policies
- Ensure consistency across processes, to the extent possible
- Create form compliance notices and documents
- Contemplate, and plan for, handling alleged conflicts of interest
- Design education and training plans (8 hours)
- Communicate with stakeholders



## QUESTIONS?

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