



K-12 Checklist

Title IX-Compliant Policies Against Sexual Harassment

The Department of Education (ED) implemented final regulations under Title IX of the Education Amendments of 1972, which forbids sex discrimination, including sexual harassment, by educational institutions that receive federal financial assistance.

The regulations represent a major shift from prior guidance on administrative enforcement; while they narrow the definition of “sexual harassment” to which a school must respond under Title IX, they also impose highly prescriptive requirements for investigating and adjudicating matters that fall under Title IX’s jurisdiction.

United Educators (UE) created this checklist and a companion publication, **Checklist for Title IX-Compliant Sexual Harassment Grievance Procedures in K-12 Schools**. K-12 members should use the checklists together to help ensure compliance with numerous mandates in the regulations.

Compliance with Other Laws

These checklists specifically address the obligation to prevent and respond to sexual harassment of students and employees under Title IX only, but K-12 schools also must comply with other requirements governing sex discrimination and sexual harassment under federal law (such as Title VII of the Civil Rights Act for employees) and state laws (including state mandatory reporting laws and criminal laws regarding sexual abuse of minors).

Although ED takes the position that the final Title IX regulations don't impair institutions' ability to comply with other federal laws, it explicitly states that the final regulations pre-empt conflicting state laws. Nevertheless, Title IX complaints are likely to trigger overlapping and different requirements under state laws, such as state-specific anti-bullying laws or expulsion hearing laws. Schools with collective bargaining agreements or binding employee handbook provisions may face additional competing legal or contractual requirements.

UE strongly recommends that schools consult experienced counsel for advice about their compliance obligations under all applicable laws and agreements and how to coordinate the school's response to sexual harassment, particularly if other requirements may be inconsistent with Title IX regulations.

Terminology

This checklist adopts the terms and definitions the final regulations use. Accordingly, "complainant" refers to an alleged victim of sexual harassment and "respondent" to an alleged perpetrator of sexual harassment, regardless of whether a formal complaint exists; "parties" means the complainant and the respondent. The terms "complainant," "respondent," and "parties" include the parents or guardians of elementary and secondary school students bringing a complaint on behalf of their student. Similarly, the checklist follows the final regulations in referring to the official who makes the determination regarding responsibility as the "decision-maker" (singular, but depending on the school, this could mean one or more people).

Sexual Harassment Outside Title IX Parameters

While the regulations redefine sexual harassment and limit the conduct that can (and must) be addressed under Title IX, they also make clear that schools are free to address sexual harassment that falls outside Title IX – such as alleged harassment off campus, including in study abroad programs – under other policies or codes of conduct.

For each item in the checklist, check the appropriate box ("Yes," "No," or "N/A (Not Applicable)") and note any additional needed actions in the space to the right.

Policy Adoption/Publication, Grievance Procedures

Actions Needed

Has your school adopted a policy stating that it complies with Title IX, which prohibits sex discrimination, including sexual harassment, against students and employees? Yes No N/A

Is your school's policy published on its website? Yes No N/A

Is your school's policy published in handbooks or catalogs provided to:

- Current students and employees? Yes No N/A

- Applicants for employment (or admission, if applicable)? Yes No N/A

- Parents or guardians of elementary and secondary school students? Yes No N/A

- Unions or professional organizations that have collective bargaining or professional agreements with the school? Yes No N/A

Has your school adopted the following Title IX grievance procedures:

- A general grievance procedure that provides for “prompt and equitable resolution” of complaints by students or employees of sex discrimination prohibited by Title IX (such as allegations of discrimination in admissions, athletics, or employee pay, or retaliation allegations)? Yes No N/A
- A separate grievance procedure that complies with specific requirements for grievance processes applicable to formal complaints of sexual harassment, as mandated by the final regulations, as addressed [here](#)? Yes No N/A

Reporting to Title IX Coordinator

- Has your school designated, and given necessary authority to, at least one Title IX Coordinator who is responsible for coordinating the school’s response to allegations of Title IX violations and for overseeing Title IX investigations?** Yes No N/A

Does your school identify the Title IX Coordinator by including the relevant name or job title, office address, telephone number, and email address in a written notice to:

- Current students and employees? Yes No N/A
- Applicants for employment (or admission, if applicable)? Yes No N/A
- Parents or guardians of elementary and secondary school students? Yes No N/A
- Unions or professional organizations that have collective bargaining or professional agreements with the institution? Yes No N/A

- Does your school prominently display the Title IX Coordinator’s contact information on its website?** Yes No N/A

Does your school’s policy make clear that:

- The Title IX Coordinator is the primary school contact for receiving reports or complaints of sex discrimination, including sexual harassment, under Title IX? Yes No N/A
- Any person may file a report or complaint with the Title IX Coordinator at any time, including outside regular business hours (such as by email or completing an online form)? Yes No N/A
- All school employees must report to the Title IX Coordinator sexual harassment incidents or allegations of which they become aware? Yes No N/A

Jurisdictional Definitions: Sexual Harassment

Does your school’s Title IX policy explain that under current ED regulations, it must respond in a manner that isn’t deliberately indifferent when it has actual knowledge of sexual harassment occurring in the school’s education program or activity against a person in the United States?

Yes
 No
 N/A

Does your school’s Title IX policy incorporate the definition for “actual knowledge” as notice or allegations of sexual harassment to:

- The Title IX Coordinator?
 Yes
 No
 N/A

- Any school official with authority to institute corrective measures on your school’s behalf?
 Yes
 No
 N/A

- Any school employee?
 Yes
 No
 N/A

Does your school’s Title IX policy incorporate the definition for “sexual harassment” as conduct on the basis of sex that is any of the following:

- *Quid pro quo* harassment by an employee, meaning an employee conditioning educational benefits on participation in unwelcome sexual conduct?
 Yes
 No
 N/A

- Hostile environment sexual harassment, meaning unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity?
 Yes
 No
 N/A

- Sexual assault, dating violence, domestic violence, or stalking as defined by the Clery Act (as amended by the Violence Against Women Act of 2013 (VAWA)) and its regulations¹?
 Yes
 No
 N/A

Does your institution’s Title IX policy incorporate the definition for “education program or activity” as all operations of the school, including:

- Locations, events, or circumstances over which your institution has substantial control over both:

- The respondent?
 Yes
 No
 N/A

- The context in which the sexual harassment occurs?
 Yes
 No
 N/A

- Any building owned or controlled by a recognized student organization?
 Yes
 No
 N/A

¹ Although most provisions of the Clery Act and its implementing regulations apply only to higher education institutions, the final Title IX regulations apply its definitions of these particular terms to K-12 schools as well.

Does your school’s Title IX policy incorporate the definition for “deliberate indifference” as a response that is clearly unreasonable under the known circumstances? Yes No N/A

Additional Definitions

Does your school’s Title IX policy define:

• **Complainant** as a person who has allegedly been subjected to possible sexual harassment? Yes No N/A

• **Respondent** as a person reported to have engaged in possible sexual harassment? Yes No N/A

Does your school clearly define “consent” to sexual activity and apply that definition consistently, including between males and females and between the parties in a Title IX grievance process? Yes No N/A

Does the Title IX policy make clear that it applies to conduct:

• Between students? Yes No N/A

• Between employees? Yes No N/A

• Between an employee and a student? Yes No N/A

Sexual Harassment Not Covered by Title IX

Has your school determined whether it will prohibit sexual harassment that does not fall under Title IX, such as because:

• Even if the allegations are true, the conduct does not qualify as severe, pervasive, and objectively offensive? Yes No N/A

• It occurs outside the school’s education program or activity? Yes No N/A

• The conduct isn’t the subject of a formal complaint? Yes No N/A

• It occurs in a study abroad program or otherwise outside the United States? Yes No N/A

If your school has made this determination, has it:

• Decided under which alternative policies or codes of conduct it will address alleged sexual harassment that is not covered by Title IX? Yes No N/A

• Explained to the school community, including parents and guardians of students, in writing which policies or conduct codes may apply to non-Title IX sexual harassment and how to report alleged violations? Yes No N/A

Retaliation

Actions Needed

Does your school prohibit retaliation (including intimidation, threats, coercion or discrimination) against any person:

- For the purpose of interfering with a right or privilege under Title IX?
 Yes
 No
 N/A
- Because the person made a report or complaint, testified, assisted, or participated or refused to participate, in an investigation, proceeding or hearing under Title IX?
 Yes
 No
 N/A

Does your school state that exercising First Amendment rights doesn't constitute prohibited retaliation under Title IX?
 Yes
 No
 N/A

Does your school make clear that a person won't be charged with an additional code of conduct violation not involving sex discrimination or sexual harassment but arising out of the same facts or circumstances as a report or complaint of sex discrimination or sexual harassment (such as underage drinking), if such a charge is for the retaliatory purpose of interfering with a right or privilege under Title IX or the regulations?
 Yes
 No
 N/A

To reduce the potential for retaliation, does your school protect the confidentiality of people involved in its Title IX process?
 Yes
 No
 N/A

Does your school state that complaints of retaliation are addressed under the general Title IX grievance procedure providing for "prompt and equitable resolution" of Title IX discrimination allegations.
 Yes
 No
 N/A

More from UE

- ED Releases Final Title IX Regulations Governing Sexual Misconduct: Guidance for K-12 Schools
- Webinar: Unpacking the Final Title IX Regulations With an Expert, Part 1 — Q&A With an Expert
- Webinar: Unpacking the Final Title IX Regulations, Part 2 — More Q&A With Josh Richards

Additional Resources

- [Final regulations], Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance
- ED: Title IX Website
- ED: Office for Civil Rights Blog

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UE wishes to thank **Kai McGintee**, Chair of the Labor and Employment and Education Practice Groups at Bernstein Shur in Portland, Maine, for reviewing this publication.



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