

THINGS TO KNOW

What is Title IX?

Title IX is a federal statute that prohibits gender discrimination in any education program or activity receiving federal funding. Title IX applies to nearly all public and private schools except:

- Schools that do not receive any federal financial assistance;
- Schools that are controlled by a religious organization to the extent that application of Title IX would be inconsistent with the religious tenets of the organization; and
- Schools whose primary purpose is the training of individuals for the military services.

"Sexual Harassment," "Sexual Assault," "Dating Violence," "Domestic Violence," and "Stalking" are forms of gender discrimination prohibited by Title IX. These terms have been defined through caselaw and federal statutes. Schools are free to establish their own definition of the term "consent" within their Title IX policy.

Who can you contact if you believe you experienced sexual harassment?

SCHOOL: You may contact your school's Title IX Coordinator in person, via mail, or via e-mail. The Title IX Coordinator can help answer questions, address concerns, and receive your complaint filing. You must report the incident to the Title IX Coordinator to trigger a school's duty to investigate.

FEDERAL AGENCIES OR THE POLICE: If you believe your school failed to adequately investigate your complaint, you can file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). Filing a complaint with the school does not bar you from filing a complaint with the police.

RESOURCES

Rape, Abuse, and Incest National Network (RAINN) National Sexual Assault Hotline: 1-800-656-HOPE (4673)

National Suicide Prevention Lifeline: 1-800-273-TALK (8255)

Substance Abuse and Mental Health Services Administration (SAMHSA) Treatment Referral Helpline: 1-877-SAMHSA7 (726-4727)



212-984-7700



klau@wbny.com



575 Lexington Avenue
New York, NY 10022

WARSHAW
BURSTEIN

TITLE IX GUIDE FOR K-12 STUDENTS AND PARENTS



www.collegedisciplinelaw.com

© 2022 Warsaw Burstein LLP. All rights reserved.

THINGS TO KNOW

What is the statute of limitations for a Title IX complaint?

There is no statute of limitations. Rather, the reporting party (complainant) always has an opportunity to bring a Title IX complaint if the complainant is participating in or attempting to participate in an educational program or activity. The sooner you file, the more likely memories will be fresh and evidence still exists.

How long is a Title IX investigation?

The length of an investigation varies depending on the complexity of the allegations and on each school's policy. On average, a typical investigation lasts 60 days.



Big Picture: Steps of the Grievance Process:

- A Title IX complaint is filed and school notifies parties of the charges.
- Investigation team interviews complainant, gathers facts, documents, and records.
- Once the investigation is complete, the accused party (respondent) has 10 days to respond.
- Investigators produce an investigative report, parties have 10 days to be reviewed before hearing.
- Hearing and/or written questioning between parties occurs and a final decision is issued.
- Both parties have the right to appeal.

Where does the school have jurisdiction under Title IX?

Schools have jurisdiction over sexual harassment that occurs in education programs and activities in the U.S. This includes:

- Locations that are part of the school's operations (including online learning platforms);
- Off-campus settings if the school exercised substantial control over the respondent and the context in which the harassment occurred; and
- Off-campus buildings owned or controlled by the school.

Are K-12 schools required to hold live hearings as part of their Title IX Grievance Processes?

K-12 schools may, but are not required to, provide for a live hearing.

Since elementary and secondary schools are not required to provide a live hearing, what process are they required to provide?

In K-12 proceedings, parties must be allowed to:

- Submit written questions to parties and witnesses;
- Learn of their answers;
- Submit limited follow-up questions; and
- The decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant.

Can a school publicly disclose the identity of parties involved in a Title IX process?

Generally, no. A school cannot disclose the identity of the parties in a Title IX process to anyone not involved in the school disciplinary action. Under the Family Educational Rights and Privacy Act (FERPA), any record that can be linked to a specific student is protected and considered confidential information. However, FERPA recognizes the following examples:

- Directory information, a health or safety emergency, or to comply with a judicial order or lawfully issued subpoena.
- Identification of the complainant or respondent is required by law.
- Disclosure is necessary to carry out the purposes of Title IX.

Even if one of the exceptions applies, a person's identity cannot be disclosed for a retaliatory purpose.



REPORTING PARTY (COMPLAINANT) FAQS

What is Sexual Harassment?

"Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

- A school employee conditioning an educational aid, benefit, or service upon an individual's participation in unwelcome sexual conduct (i.e., quid pro quo harassment);
- Any unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the school's education program or activity; and
- Any instance of sexual assault, dating violence, domestic violence, or stalking as defined in applicable federal law.

Who can bring a Title IX Claim?

An individual who is participating in or attempting to participate in an education program or activity may bring a Title IX claim. Additionally, parents and guardians of the complainant can file a complaint if the student is under eighteen (18) years old.

The school has no obligation to investigate if the complainant no longer has any involvement with the school.



Are there mandatory reporting requirements?

When a K-12 student notifies a school/ district employee of alleged sexual harassment/assault, the employee is required to report this information to the school's Title IX Coordinator. Once the Title IX Coordinator is notified, the school has "actual knowledge" and must "respond promptly in a manner that is not deliberately indifferent."

The Title IX Coordinator must promptly contact the complainant and the complainant's parent or guardian to discuss the availability of supportive measures and to explain the process for filing a formal complaint.

If a formal complaint is filed, either by the complainant, complainant's parent or guardian, or the Title IX Coordinator, a school must:

- Offer supportive measures to the respondent; and
- Follow the Title IX Grievance Process specified by the 2020 amendments.

When a K-12 student notifies a third party of alleged sexual harassment/assault, the third party should, but is not required to, seek help for the student. A third party may report the alleged sexual harassment to the student's Title IX Coordinator.

Who can file a formal complaint?

Only the complainant or the complainant's parent or guardian may file a formal complaint and the Title IX Coordinator may sign the formal complaint.

See Parent FAQs for more information.

What should complainants include in a formal complaint?

A formal Title IX investigation, known as the Grievance Process, cannot occur unless the complainant discloses his or her identity, the identity of the alleged perpetrator, and details about the alleged sexual misconduct.

The complainant must then file the complaint with the Title IX Coordinator in person, by mail, or by electronic mail. Complainants can withdraw their complaint at any time, which provides the school with the discretion to dismiss the case.

Do complainants need to file a formal complaint?

No. Although complainants may file a formal complaint, they may also request supportive measures without filing a formal complaint, or engage in mediation if they do not want to go through the Grievance Process.

Can a school remove an accused party from the school while a Title IX Grievance Process is pending?

Yes, a school may remove a respondent from its program or activity on an emergency basis if, after an individualized risk and safety analysis, the school determines that the respondent poses an immediate threat to the health or safety of any other student justifying removal. The respondent must be provided with notice and an opportunity to challenge the decision immediately following removal.

ACCUSED PARTY (RESPONDENT) FAQS

How will I know if I am being charged with violating Title IX?

Schools must provide respondents with a detailed notice of the Grievance Process and a description of the pending allegations. The notice typically includes the name of complainant, the date and location of incident, and some factual basis for the charge.

The notice must be provided with sufficient time for the respondent to prepare a response before the beginning of the process.

The notice must also include a statement that the respondent is presumed not responsible and that the parties have a right to an advisor of their choice, who may, but does not have to be, an attorney.

The notice must state that the school prohibits knowingly making false statements or knowingly submitting false information during the Grievance Process.



Will I be presumed innocent?

Schools must presume that the respondent is not responsible for the alleged misconduct until the decision-maker makes a determination at the conclusion of the Grievance Process.

Respondents must receive a fair process before any discipline is imposed. The school, not the student, has the burden of proof.

What standard of proof is used when deciding whether a respondent is guilty of sexual harassment?

Schools have the choice of using either a preponderance of evidence standard or a clear and convincing evidence standard. Schools must notify their students of which standard it is using. Most K-12 schools adopt the preponderance of evidence standard.

- Preponderance of evidence standard: whether it's more likely than not that the violation occurred.
- Clear and convincing evidence standard: whether it is highly probable or reasonably certain that the violation occurred.

What are the possible results if I am found responsible for sexual harassment?

Each school can make disciplinary and remedial decisions that are in the best interest of the school. Schools are required to publish a list of potential sanctions in their Title IX policies.

If the decision-maker finds the respondent responsible, the institution may permanently note this on the student's transcript. Both parties have an opportunity to appeal an adverse decision.

What do I do if I have been charged with a Title IX offense?

Consider what evidence and witnesses you can use to support your defense. For example, save copies of text messages, pictures, videos, or other documents and communications that relate to the allegations, and take note of any friends or classmates that may have observed you and/or the complainant around the time in question.

Our specialized Title IX attorneys can help you identify relevant information to support your defense, and help you navigate the Title IX Grievance Process. The sooner you retain counsel and begin preparing your defense, the more likely you are to obtain a favorable result.

Are supportive measures available for respondents?

Supportive measures are offered to both parties. These measures are available before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to protect the safety of all parties, the educational environment, and to deter sexual misconduct.

See Parent FAQs for more information.



PARENT FAQS

Can I file a complaint on behalf of my child?

Parents and guardians of K-12 students have a legal right to file a report and/or a formal complaint on behalf of a minor child and act on behalf of the minor child in any Title IX matter.



Will I be notified if my child is going through a Title IX process?

If you are the parent of a minor child, the school is required to notify you and your child of any investigation and discuss all options available for your child, including supportive measures.

How will the institution ensure a fair process?

Every school must follow these rules to ensure a fair process:

- Schools must treat parties equitably.
- Schools must objectively evaluate the evidence.
- Schools must avoid conflicts of interest and biases favoring one party over the other.
- Schools must describe the range of possible sanctions and remedies.
- Schools must identify which standard of evidence they utilize (preponderance of evidence or clear and convincing).
- Schools must describe procedures and permissible bases for an appeal.
- Schools must describe the range of supportive measure.
- Schools cannot seek the disclosure of privileged information (attorney/client privilege or medical information).

Are parents allowed to be present during the Grievance Process?

A student under the age of eighteen (18) may have his/her parents or guardians present during the meetings or the hearing in addition to one (1) advisor. The advisor may, but is not required to, be an attorney.

Can I draft questions on behalf of my child to ask throughout the Grievance Process?

Parents or guardians of students may act on behalf of the party in drafting questions and submitting written answers.

What supportive measures can the school implement?

Schools must provide "supportive measures" to complainants and respondents with or without a formal complaint. Supportive measures include, but are not limited to, the following:

- Counseling;
- No contact orders; and
- Modifications of class schedules.

Supportive measures must be offered free of charge. Schools must document reasons for granting or denying supportive measures.



PARENT FAQS

How does the school reach a decision?

Schools are required to provide a reasoned decision for their findings when notifying parties of the outcome. A reasoned decision identifies the allegations, describes all events which occurred, identifies the supporting facts, applies the facts to the policies, and provides a rationale for the decision and sanctions.

The Institution must provide the decision to the parties simultaneously.

How will this impact my child's future?

It is important to understand that Title IX claims made at an educational institution are distinct from criminal court claims.

A student or parent of a minor, can file a Title IX complaint without ever making a report to the police, and a student can face Title IX allegations, and even can be found responsible for a Title IX violation, without ever facing criminal consequences.

Generally, the outcome of a Title IX investigation is not public.

If the decision-maker finds the respondent responsible, the institution may permanently note this on the student's transcript.

This highlights the importance of involving an attorney early in the case to try to maintain a clean disciplinary record.



Is my child protected against retaliation?

Yes, schools cannot intimidate, coerce, or discriminate against any individual for participating in a Title IX investigation, proceeding, or hearing.

Schools are also barred from filing charges against an individual for code of conduct violations arising out of the same facts or circumstances as the Title IX report. Such behavior constitutes retaliation under Title IX 34 CFR § 106.71.

If an individual believes they are the victim of retaliation, they can file their retaliation complaint according to the Grievance Procedures for sex discrimination.

Can my child appeal an adverse decision?

Yes, a school must offer both parties the option to appeal regardless of the outcome. Appeals must be based on the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- Newly discovered evidence that could affect the outcome of the matter; and/or
- Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.

Other ways you can help include:

Your child will need you to have an open-mind and create a support system. Other ways you can help include:

- Review the school's Title IX and disciplinary policies with your child;
- Help create an academic plan to keep your student's education on track;
- Look for a specialized attorney to assist your child with the process; and
- Review the accommodations available to your student through the school.