Title IX Basics
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**Q: What Is Title IX?**

A: Title IX of the Education Amendments of 1972 is a federal statute that prohibits sex discrimination in any education program or activity receiving federal funds. Title IX states:

> 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.¹

The scope of Title IX is very broad. Notably, the law protects any “person”; it is not limited to students or employees. In addition, Title IX is not just for public schools. Any school, college, university, or other entity providing an education program or activity, whether public or private, must comply with the law’s requirements as a condition of receiving federal funds.

**Q: How does Title IX apply to athletics?**

A: Title IX does not require athletic programs for male and female students to be identical, but it does require equity. Whether a program is equitable depends on multiple factors, including:

- Whether the types of sports and levels of competition offered effectively accommodate students’ athletic interests and abilities;
- Provision of facilities, equipment, and supplies;
- Scheduling of games and practice times; and
- Opportunities for coaching, tutoring, training, and support services.²

When determining whether a district’s athletic programs comply with Title IX, even donations of funds or materials from booster clubs count.³ District officials should seek legal advice before accepting large gifts to a particular athletic program.

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² 34 C.F.R. § 106.41(c).
³ See, e.g., Daniels v. Sch. Bd. of Brevard County, Fla., 985 F. Supp. 1458 (M.D. Fla. 1997) (finding school board could be held responsible for inequitable funding resulting from booster club donations although district itself provided equal funding).
Title IX regulations set out special rules for participation in athletics, allowing single-sex teams for contact sports, such as football, wrestling, and basketball.\(^4\) (Note that in Texas, University Interscholastic League rules for secondary schools allow girls to try out for football.) Non-athletic school activities, however, including dance and cheerleading, should be equally available to male and female students.

**Q: How does Title IX apply to other activities?**

**A:** Title IX regulations generally prohibit providing or carrying out an education program or activity separately on the basis of sex. There are some common-sense exceptions. For example, boys and girls in K-12 school districts can be separated for classes about human sexuality. And choir can be single sex if based on vocal range or quality.\(^5\)

Title IX regulations also permit single-sex schools in certain circumstances, but such programs must be carried out on a voluntary and equitable basis.\(^6\)

**Q: What does Title IX say about sexual harassment?**

**A:** Currently, neither Title IX nor its implementing regulations specifically address sexual harassment. Our understanding that sexual harassment may violate the law comes from a series of U.S. Supreme Court cases in the 1990s. Specifically, the Court held that a district may be liable for monetary damages under Title IX when an employee with authority to take corrective action has actual notice of sexual harassment within a district program or activity but responds with deliberate indifference, effectively denying the victim access to the program or activity based on sex.\(^7\)

When a student is sexually harassed by another student, rather than a district employee, there is an additional requirement that the harassment be so “severe, pervasive, and objectively offensive” that it effectively creates a hostile educational environment.\(^8\) In other words, mere teasing or name-calling, by itself, doesn’t rise to the level of sexual harassment under Title IX, even if it is based on a student’s sex.\(^9\)

\(^4\) 34 C.F.R. § 106.41(b).

\(^5\) 34 C.F.R. § 106.34(a).

\(^6\) 34 C.F.R. § 106.34(b).


\(^9\) See *Davis*, 526 U.S. at 652 (stating it is not enough to show that a student has been teased or called offensive names); see also *Sanches v. Carrollton-Farmers Branch Indep. Sch. Dist.*, 647 F.3d 156, 165-67 (5th Cir. 2011) (holding derogatory gossip and name-calling were insufficient for Title IX claim, even if based on sex).
The foundational cases regarding sexual harassment under Title IX arose in a K-12 context. However, courts have applied the same standards in higher education.\textsuperscript{10}

**Q: Who is the Title IX coordinator?**

**A:** Each educational institution that receives federal funds is required to appoint at least one employee to coordinate the institution’s efforts to comply with Title IX.\textsuperscript{11} All students and employees must be notified of the name, office address, and telephone number of the appointed employee or employees.\textsuperscript{12} The U.S. Department of Education (DOE) has issued extensive written guidance on the role of the Title IX coordinator.\textsuperscript{13} Just like the standard for liability, the DOE typically applies the same rules to colleges and universities as to K-12 school districts.

Meeting the DOE’s expectations can be difficult in K-12 school districts, however, since, unlike larger institutions, school districts rarely have a dedicated Title IX office or a full-time coordinator. In 2016, researchers in Colorado and California issued a study based on unprecedented research into the role of the Title IX coordinator in K-12 schools.\textsuperscript{14} The coordinators interviewed in the study reported multiple challenges, including a lack of training, frequent turnover, and uncertainty as to their responsibilities.

**Q: What are the proposed changes to Title IX?**

**A:** On November 16, 2018, the DOE proposed amending the regulations that implement Title IX.\textsuperscript{15} The new proposed regulations are primarily intended to clarify the application of Title IX to claims of sexual harassment, a topic that the statute and existing regulations have never explicitly addressed. Among other potential changes, the proposed rules would:

- Create a legal duty to respond only when a district has “actual knowledge of sexual harassment in an education program or activity” and require a district to avoid being “deliberately indifferent” in its response;
- Define actual notice of sexual harassment as knowledge of the harassment by the Title IX coordinator; any official who has authority to institute corrective measures on behalf of a district; or, with regard to K-12 student-on-student sexual harassment, a teacher;

\begin{footnotes}
\item[12] 34 C.F.R. § 106.8(a).
\item[15] US Dep’t of Educ., Secretary DeVos: Proposed Title IX Rule Provides Clarity for Schools, Support for Survivors, and Due Process Rights for All (Nov. 16, 2018).
\end{footnotes}
• Allow emergency removal of a student during an investigation into sexual harassment allegations in certain circumstances, consistent with procedures that protect students with disabilities under federal law;

• Require district procedures for investigating and resolving claims of sexual harassment to become more formal and adversarial, including: a formal complaint; written notice of the allegations provided in time for an accused student to prepare a response before an initial interview; equal opportunity for both parties to present witnesses and evidence, examine the evidence, and have an advisor of their choice;

• Require a decision maker who is not the same person as the Title IX coordinator or the investigator; and

• Prohibit a Title IX coordinator, decision maker, or investigator from having a conflict of interest or bias and require these individuals to receive gender-neutral training.

The DOE received over 100,000 comments from the public regarding the proposed rules. Many commenters expressed concern that the substantive parts of the proposed regulations—establishing legal liability based on “actual notice” and “deliberate indifference”—will have a chilling effect on reports of sexual violence. Others believe that the proposed changes would promote fairness and clarity by bringing the DOE’s standards in line with the US Supreme Court’s opinions.

The proposed rules’ procedural components are also controversial. While the DOE intended to address due process concerns raised by litigation from accused students in higher education, TASB16 and the National School Boards Association17 pointed out in their responses to the proposed rules that student discipline for K-12 students is governed by a different set of laws and educational needs.

As this debate plays out on the stage of public opinion, school district officials should prepare for changes to school district policy and new training requirements if the proposed rules are adopted as written. Contact TASB Legal Services at 800.580.5345 or legal@tasb.org or your local school district attorney for more information about Title IX.
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