



UNDERSTANDING
THE
2024 TITLE IX
REGULATIONS



A Guide for School Administrators

Jessica Filler, J.D.

Sam Kerr, J.D., Ed.D.

Cassidy Stalley, J.D.

Disclaimer

This presentation is intended for educational purposes only. It is not intended to convey legal advice pertaining to any particular claim or situation and is not a substitute for legal advice in connection with any claim or particular matter.

Note: This presentation utilizes resources from U.S. DOE, JDSupra, NSBA/COSA, National Law Review, Penn. Standards and Practices Commission, and EdWeek.





OVERVIEW OF TITLE IX





MORE THAN FIFTY YEARS AGO,
CONGRESS RECOGNIZED THAT
GIRLS AND WOMEN WERE NOT
RECEIVING EDUCATIONAL
OPPORTUNITIES THAT WERE
EQUAL TO THOSE AFFORDED TO
THEIR MALE COUNTERPARTS.




IT ATTEMPTED TO REMEDY THIS
HISTORICAL INEQUITY THROUGH
THE PASSAGE OF THE EDUCATION
AMENDMENTS ACT OF 1972,
COMMONLY KNOWN AS TITLE IX.

TITLE

**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
WHICH IS RECEIVING FEDERAL
FINANCIAL ASSISTANCE.**






TITLE IX'S ORIGINAL GOAL
WAS TO ENSURE WOMEN
EXPERIENCED "FULL
CITIZENSHIP STATURE,"
INCLUDING THE "EQUAL
OPPORTUNITY TO ASPIRE,
ACHIEVE, PARTICIPATE IN
AND CONTRIBUTE TO
SOCIETY BASED ON THEIR
INDIVIDUAL TALENTS AND
CAPACITIES."



United States v. Virginia, 518 U.S. 515, 532, 116
S.Ct. 2264, 135 L.Ed.2d 735 (1996).



INJUNCTION –
SOUTH DAKOTA
ENJOINED



QUAL JUSTICE UNDER LA

MEMORANDUM AND ORDER

@ pages 55-56

IT IS HEREBY ORDERED that plaintiffs’ motion for preliminary injunction [9-2] is granted only as follows: pending final resolution of this case, defendants, and all their respective officers, agents, employees, attorneys, and persons acting in concert or participation with them are enjoined from implementing, enacting, enforcing, or taking any action in any manner to enforce the Final Rule promulgated by the Department of Education titled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance” and published in the Federal Register at 89 Fed. Reg. 33,474, set to become effective on August 1, 2024, against plaintiffs Arkansas, Missouri, Iowa, Nebraska, North Dakota, South Dakota and A.F., and is denied in all other respects.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Case No. 4:24-CV-636-RW

THE STATE OF ARKANSAS et. al.)
Plaintiffs,)
vs.)
UNITED STATES DEPT.)
OF EDUC., et.al.,)
Defendants.)



The Supreme Court of the United States

From the SCOTUS Blog:

The Biden administration on Monday (7/22/2024) asked the Supreme Court to temporarily put on hold a portion of two orders issued by federal trial courts in Louisiana and Kentucky that prohibit the Department of Education from enforcing any part of an April 2024 rule implementing Title IX of the Education Amendments of 1972, which bars sex discrimination in education programs that receive federal funding.

In a pair of filings, the U.S. Solicitor General urged the justices to intervene. She emphasized that the 2024 rule is an “omnibus” regulation that addresses a wide range of issues, unrelated to discrimination against transgender people, that the states have not challenged. Moreover, she added, when it issued the rule, the Department of Education intended each provision to stand alone. The district courts’ orders blocking the enforcement of the entire rule, she contended, therefore sweep too broadly to block “dozens of provisions that” were not before the courts. Such a “blunderbuss approach to preliminary relief,” she maintained, is “both wrong and consequential.”



Current Injunctions 2024 Title IX Regulations

Injunctions Have Been Implemented In The Following States:

AL, AR, FL, GA, IA, ID, IN, KY, LA, MO, MS, MT, NE,
ND, OH, OK, SD, SC, TN, TX, VA, WV, AK*, KS*, UT*, WY*

An injunction is a court order requiring an individual or entity to either perform or stop performing a specific action. In states where a complete injunction has been implemented, the Department of Education will not be able to enforce the 2024 regulations. Those states will not be required to comply with the 2024 Title IX Regulations if the injunction is still in place on August 1, 2024.

* These states have an injunction that further extends to include schools with certain parent organizations.

As of July 31, 2024, pursuant to Federal court orders, the Department is currently enjoined from enforcing the 2024 Regulations in these states. The Department is also currently enjoined from enforcing the 2024 Final Rule at the schools on the list [located here](#).

Note: States **highlighted** have both injunctions and do-not-implement directives. Source: ATIXA (2024).




State-Level “Do Not
Implement Directives”
Have Been
Implemented in the
Following States:

AL, AR, FL, IN, LA, MT, NE,
OK, SC, UT, TX

A Do-Not-Implement Directive is any sort of mandate from a state official or agency, such as the governor, state attorney general, or state department of education, prohibiting schools, districts, or institutions in that state from complying with the 2024 Title IX Regulations. The details of these directives vary from state-to-state and may only apply to public entities or those receiving state funding.

Note: These states have both injunctions *and* do-not-implement directives.



KEY PROVISIONS OF THE
2020 TITLE IX
REGULATIONS



Under the 2020 regulations, prohibited "sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

- an employee conditioning the provision of an aid, benefit or service on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo)
- unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to an education program or activity (i.e., hostile environment)
- sexual assault (as defined by Clery Act), or "dating violence," "domestic violence" and "stalking" (as defined by Violence Against Women Act)

The 2020 Regulations:



Requires schools to offer clear, accessible options for any person to report sexual harassment

Empowers survivors to make decisions about how a school responds to incidents of sexual harassment

Requires schools to offer survivors supportive measures, such as class or dorm reassignments or no-contact orders

Protects K-12 students by requiring elementary and secondary schools to respond promptly when *any* school employee has notice of sexual harassment

The 2020 Regulations (continued):



Shields survivors from having to come face-to-face with the accused during a hearing and from answering questions posed personally by the accused

Requires schools to select one of two standards of evidence: (1) the preponderance of the evidence standard or (2) the clear and convincing evidence standard, and to apply the selected standard evenly to proceedings for all students and employees, including faculty

Provides "rape shield" protections and ensures survivors are not required to divulge any medical, psychological, or similar privileged records

Requires schools to offer an equal right of appeal for both parties to a Title IX proceeding

The 2020 Regulations (continued):



Gives schools flexibility to use technology to conduct Title IX investigations and hearings remotely

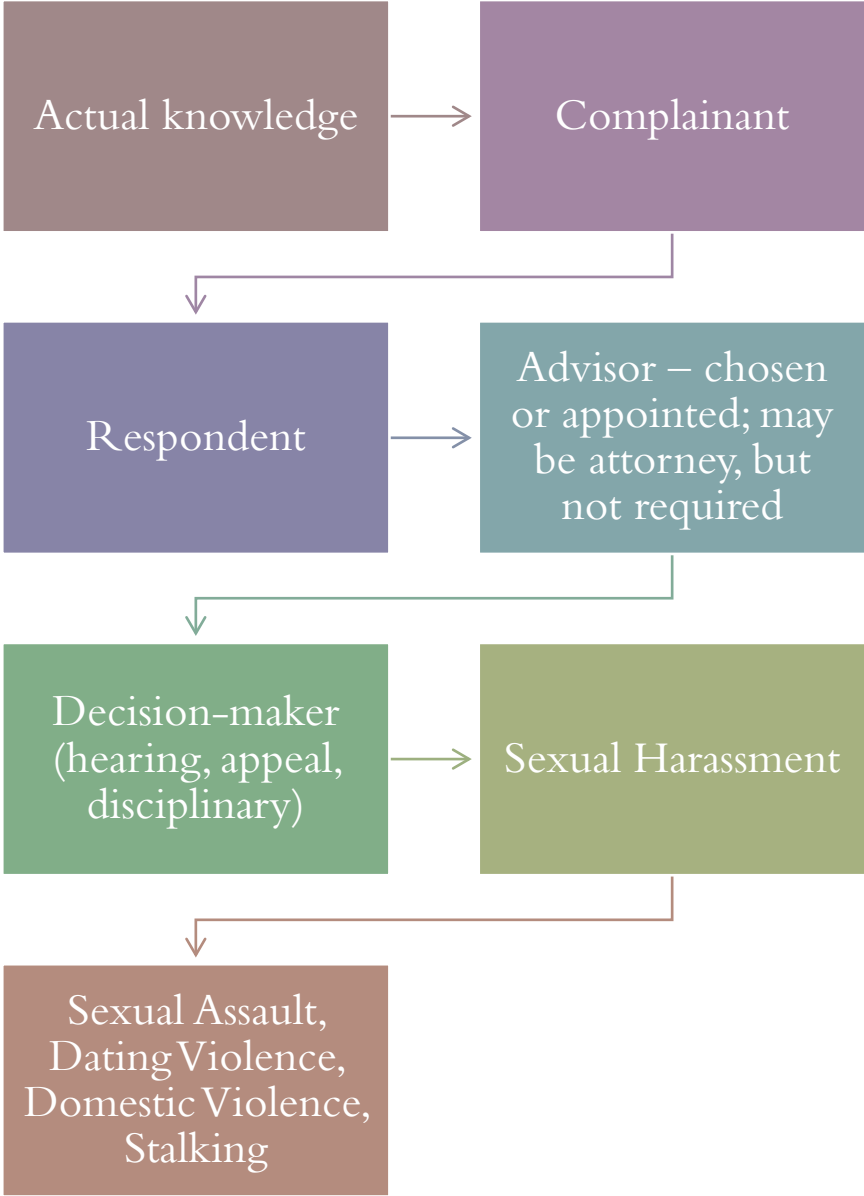


A school district must respond when it has "actual knowledge." That is, notice to the Title IX Coordinator or "an official of the recipient who has authority to institute corrective measures" of "sexual harassment."



A school's "education program or activity" has been redefined to include "locations, events, or circumstances over which the recipient exercised substantial control" over the school and the context in which the sexual harassment occurred, as well as clarifying that it must occur in the United States.

DEFINITIONS



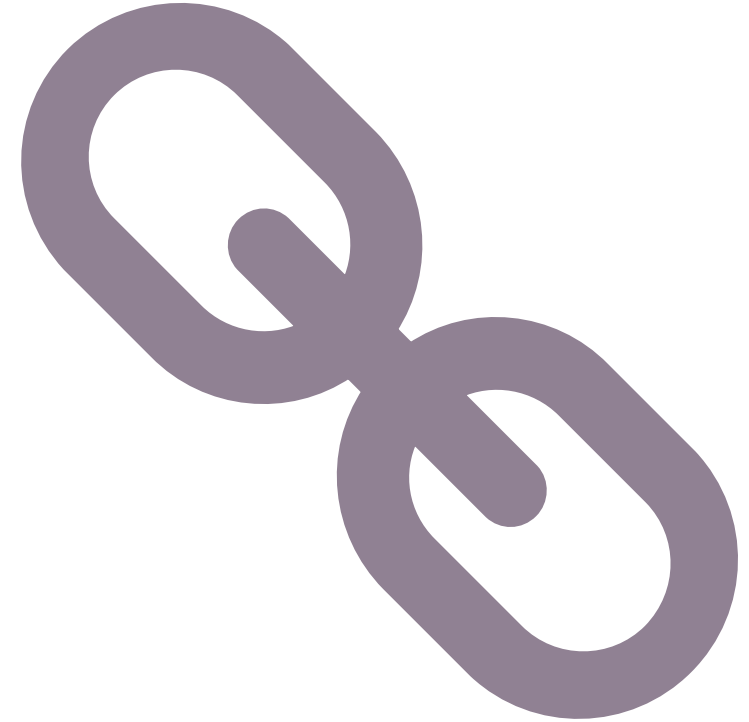
RECEIVING REPORTS

Title IX Coordinator or
any Employee


Any Person may Report
(does not make them the
complainant)

Actual knowledge of sexual
harassment or allegation of
sexual harassment triggers
response (even if no formal
complaint filed)

FOR ADDITIONAL
INFORMATION ON
THE 2020 TIX
REGULATIONS,
FOLLOW THIS LINK:

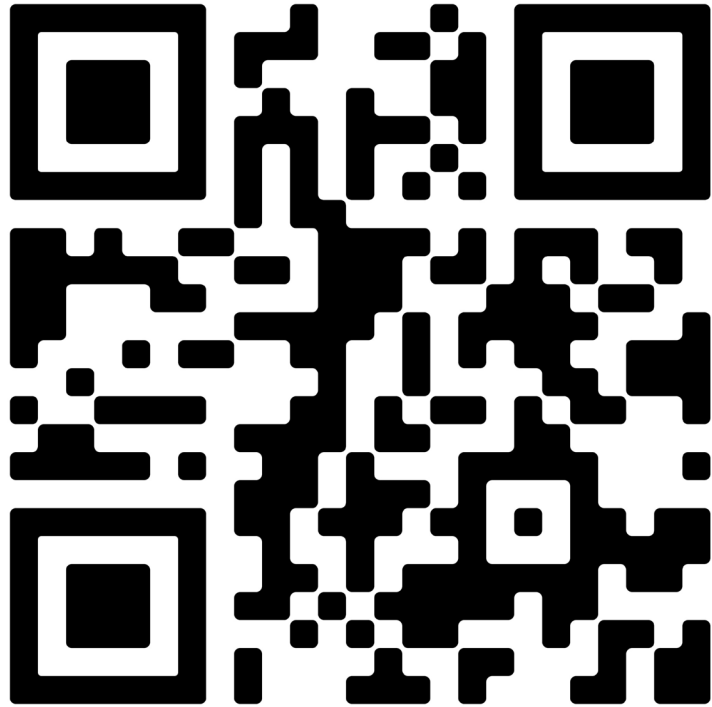


<https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-20200904.pdf>



OVERVIEW OF
2024 TITLE IX
REGULATORY CHANGES





SCAN ME

Summary of Key 2024 Provisions



Summary of Key Provisions of the Department of Education's 2024 Title IX Final Rule*

This chart summarizes the major provisions of the 2024 amendments and also summarizes how these provisions differ from the 2020 amendments. The 2020 amendments remain operative and binding until the new regulations go into effect on August 1, 2024.

Issue	2024 Final Rule
Clarifying Scope of Sex Discrimination (§ 106.10)	The final regulations clarify that sex discrimination includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
Defining Sex-Based Harassment (§ 106.2)	Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in § 106.10, when it takes the form of: <ul style="list-style-type: none"> quid pro quo harassment (e.g., when an employee conditions a benefit on a person's participation in unwelcome sexual conduct); specific offenses (e.g., sexual assault, dating violence, domestic violence, and stalking); and/or hostile environment harassment. <p>The final regulations define hostile environment harassment as unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's[†] education program or activity.</p> <p><i>The 2020 amendments,[‡] at § 106.30(a), cover sexual harassment, but do not address other forms of sex-based harassment and prohibit unwelcome sex-based conduct only if it is "so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity."</i></p>
Addressing All Sex Discrimination Occurring Under the Recipient's Program or Activity in the United States (§ 106.11)	Title IX requires a recipient to address all sex discrimination occurring under its education program or activity in the United States. Under the final regulations, conduct that occurs under a recipient's education program or activity includes, but is not limited to: <ul style="list-style-type: none"> Conduct that occurs in any building owned or controlled by a student organization that is officially recognized by a postsecondary institution; and Conduct that is subject to the recipient's disciplinary authority.

* The final regulations make amendments to 34 C.F.R. 106.1 et seq. For a more complete explanation of the final regulations, please see the Department's 2024 Notice of Final Rule on Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, which is available [here](#).

† A recipient is an elementary school, secondary school, postsecondary institution, or other entity that operates an education program or activity and receives Federal funds from the Department.

‡ "2020 amendments" refers to provisions in the Title IX regulations that were amended in 2020.

Clarifying Scope of Sex Discrimination (34 CFR § 106.10)

The final regulations clarify that sex discrimination includes discrimination based on:

Sex Stereotypes

Sex Characteristics

Pregnancy or Related Conditions

Sexual Orientation

Gender Identity

Defining Sex-Based Harassment (§ 106.2)

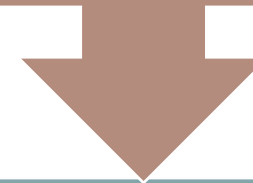
Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the bases of sex, including on the bases described in § 106.10, when it takes the form of:

- **Quid Pro Quo Harassment** (e.g., when an employee conditions a benefit on a person's participation in unwelcome sexual conduct);
- **Specific Offenses/Clery Crimes** (e.g., sexual assault, dating violence, domestic violence, and stalking); and/or
- **Hostile Environment Harassment.**
 - Defined as: unwelcome sex-based conduct that, based on the totality of the circumstances is subjectively and objectively offensive and is so severe *or* pervasive that **limits** or denies a person's ability to participate in or benefit from the recipient's education program or activity

Addressing All Sex
Discrimination
Occurring Under the
District's Program or
Activity in the United
States (§ 106.11)



Title IX requires a district to address **all sex discrimination** occurring under its education program or activity in the United States.



Conduct that occurs under a district's education program or activity includes, but is not limited to:

Conduct that is subject to the district's disciplinary authority.



A district is required to address a sex-based hostile environment, **even when some conduct alleged** to be contributing to the hostile environment occurred offsite.

Responding to Sex Discrimination (§ 106.44(a))



A district **with knowledge** of conduct that reasonably may constitute sex discrimination in its education program or activity **must respond promptly and effectively.** (§ 106.44(a)(1)).

A district must also **take the actions** outlined in § 106.44(b)–(k) to **address sex discrimination** in its education program or activity.
(§ 106.44(a)(2)).



Ensuring Districts Learn of Possible Sex Discrimination (§ 106.44(c))

A district is obligated to **require certain employees** to notify the Title IX Coordinator when the employees have information about conduct that **reasonably may constitute** sex discrimination.

Any non-confidential employee at an elementary school or secondary school



Any non-confidential employee at a postsecondary institution or other recipient who either has:

1. Authority to take corrective action, or
2. Has responsibility for administrative leadership, teaching, or advising



All other non-confidential employees at a postsecondary institution or other recipient are obligated to either:

1. Notify the Title IX Coordinator, or
2. Provide the contact information of the Title IX Coordinator and information about how to make a complaint of sex discrimination

Respecting Complainant Autonomy

*(§§ 106.2, 106.8(d),
106.44(c), (d), (f),
106.45(a)(2))*

To ensure that a district's education program or activity is free from sex discrimination while also respecting complainant autonomy, a district is required to provide **clear information** and **training on:**

- **When their employees must notify the Title IX Coordinator** about conduct that reasonably may constitute sex discrimination, and
- **How students can seek confidential assistance or make a complaint of sex discrimination** requiring the district to initiate its grievance procedures.




Respecting Complainant Autonomy (cont.)

Three categories of confidential employees **who are not required to notify the Title IX Coordinator** about conduct that reasonably may constitute sex discrimination.

1. Employees whose communications are privileged or confidential under law
2. Employees designated to provide services related to sex discrimination
3. Employees conducting an institutional review board-approved research study

Instead, these employees must provide information to anyone who informs the employee of conduct that reasonably may constitute sex discrimination about their status as confidential for purposes of Title IX &

- How to contact the Title IX Coordinator,
- How to make a complaint, and
- How the Title IX Coordinator can help



Respecting Complainant Autonomy (cont.)

A complainant is also protected
in their right to make a
complaint about sex
discrimination they
experienced **even if they have
chosen to leave** the district as
a result of that discrimination
or for other reasons.
(§§ 106.2 and 106.45(a)(2)).





Title IX
Coordinator
Response to Sex
Discrimination



Treat Equitably	Treat the complainant and respondent equitably
Support	Offer supportive measures for complainant, and in some instances, the respondent
Notify	Notify the complainant and respondent of the grievance procedures
Initiate	Initiate the grievance procedures or informal resolution
Determine	If no complaint or withdrawal, make a fact-specific determination on whether the Title IX Coordinator should initiate a complaint
Ensure	Take other appropriate prompt and effective to steps to ensure sex discrimination does not continue or recur

Grievance Procedures for All Sex Discrimination Complaints

(§ 106.45)

All districts are required to adopt, in writing, a grievance procedure that incorporates the following:

- Equitable treatment of complainant and respondent
- No conflict of interest or bias
- Presumption that respondent not responsible until determination made
- Reasonably prompt timeframes
- Supportive Measures – offered to both parties, not punitive or disciplinary
- Reasonable steps to protect privacy of parties and witnesses
- Objective evaluation of evidence
- Written notice to all parties of the allegations, including details of the alleged incident – provided within 5 days of receiving complaint
- Permitted dismissals
- Permitted consolidation of complaints arising out of same facts or circumstances
- Burden on district to gather evidence
- Equal opportunity for all parties to present facts and witnesses and other relevant evidence
- Process for assessing credibility
- Use of preponderance of the evidence standard
- Notify the parties in writing of the determination – within 10 days of hearing
- Coordinate and implement remedies, disciplinary sanctions
- Appeal Process – must be appealed within 10 days of determination
- Informal resolution process

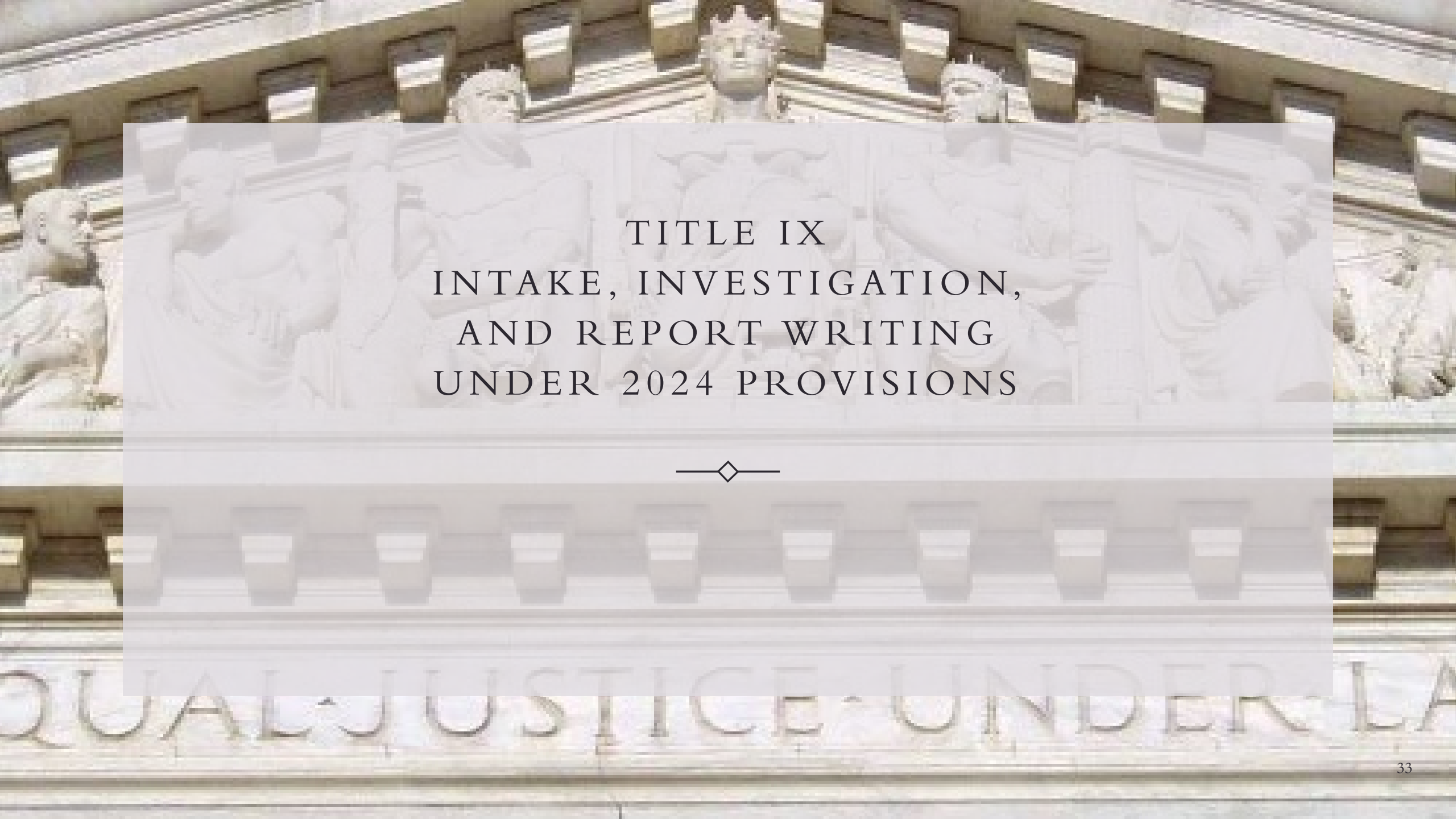
Prohibition on
More than *De
Minimis* Harm
(§ 106.31(a)(2))



A district is prohibited from separating or treating any person differently based on sex in a manner that subjects that person to more than de minimis harm,



NOTE: Policies and practices that prevent a student from participating in a district's education program or activity consistent with their gender identity impose more than de minimis harm on that student on the basis of sex, and therefore generally violates Title IX



TITLE IX
INTAKE, INVESTIGATION,
AND REPORT WRITING
UNDER 2024 PROVISIONS



QUAL JUSTICE UNDER LA

Grievance Process Generally



Due Process

- Right to investigation and adjudication
- Presume Respondent not responsible until determination made at the conclusion of procedure

Grievance Procedures


- Written; Formal Complaint; Supportive Measures; Disciplinary Sanctions; Remedial Measures

Jurisdiction

- Sex-based discrimination, “all operations” of school property/activity/event (exercise control)

Notice Requirements

- Notify all Parties of Procedures, Allegations, Parties, Dates, Retaliation Prohibited, Opportunity to Review Relevant Evidence



Response to
Report of Sexual
Harassment



Prompt Response

Equitable Treatment

- For complainant
- For respondent

Supportive Measures

- Supportive measures vs. disciplinary sanctions

Prompt Response



As soon as
reasonably
possible –
contact
complainant
to:

- discuss the availability of and offer supportive measures
- consider the complainant's wishes with respect to supportive measures
- inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
- explain to the complainant the process for filing a formal complaint



Formal Complaint



- Contain an allegation of sexual harassment and a request that the district investigate the allegations is required before the district may conduct a formal investigation of sexual harassment or take any action (other than supportive measures) against a person accused of sexual harassment.
- At a minimum, a formal complaint must:
 - Name and address of the complainant and the student's parent or guardian if the complainant is a minor student
 - Describe the alleged sexual harassment
 - Request an investigation of the matter, and
 - Signed by the complainant or otherwise indicate that the complainant is the person filing the complaint
- May be filed with Title IX Coordinator in person, by mail, and by email

Notice of Formal Complaint

Notice to contain:



- The Title IX grievance process, including any informal resolution process;
- The allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process;
- That each party may have an advisor of their choice, who may be, but is not required to be, an attorney;
- That each party is entitled to inspect and review evidence; and
- A reference to any provision in the district's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.



Dismissal of Formal Complaint

Must dismiss a formal complaint if alleged conduct:

- Would not constitute sexual harassment, even if proved
- Did not occur in district's education program or activity
- Did not occur against a person in the United States

May dismiss if:

- Complainant notifies wish to withdraw in writing to Title IX Coordinator
- Respondent no longer enrolled/employed
- Special circumstances preventing gathering of evidence

Must send notice to all parties, stating reason

Does not preclude district action under other policies

Title IX Coordinator may redirect after dismissal



Determination/Decision-Maker

- Decision-Maker (not Title IX Coordinator) must issue written decision
- Provided simultaneously to the parties
- Must include appeal procedures



Appeals Process



Must include the procedures and permissible bases for the complainant and respondent to appeal

Upon determination regarding responsibility

Dismissal of a formal complaint



Appeal Standing

Procedural irregularity that affected the outcome of the matter;

New evidence that was not reasonably available at the time of determination/dismissal; OR

Conflict of interest or bias for or against complainants or respondents that affected the outcome; AND

Timely



Disciplinary sanctions stayed during appeal

Informal Resolution



Not required to offer

May offer only after:

- Written notice to the parties disclosing (i) allegations of complaint; (ii) requirements of informal resolution process, including any preclusion from resuming a formal complaint after agreeing to a resolution; and (iii) consequences from participating in informal process, including records that will be maintained or could be shared

Voluntary written consent from the parties

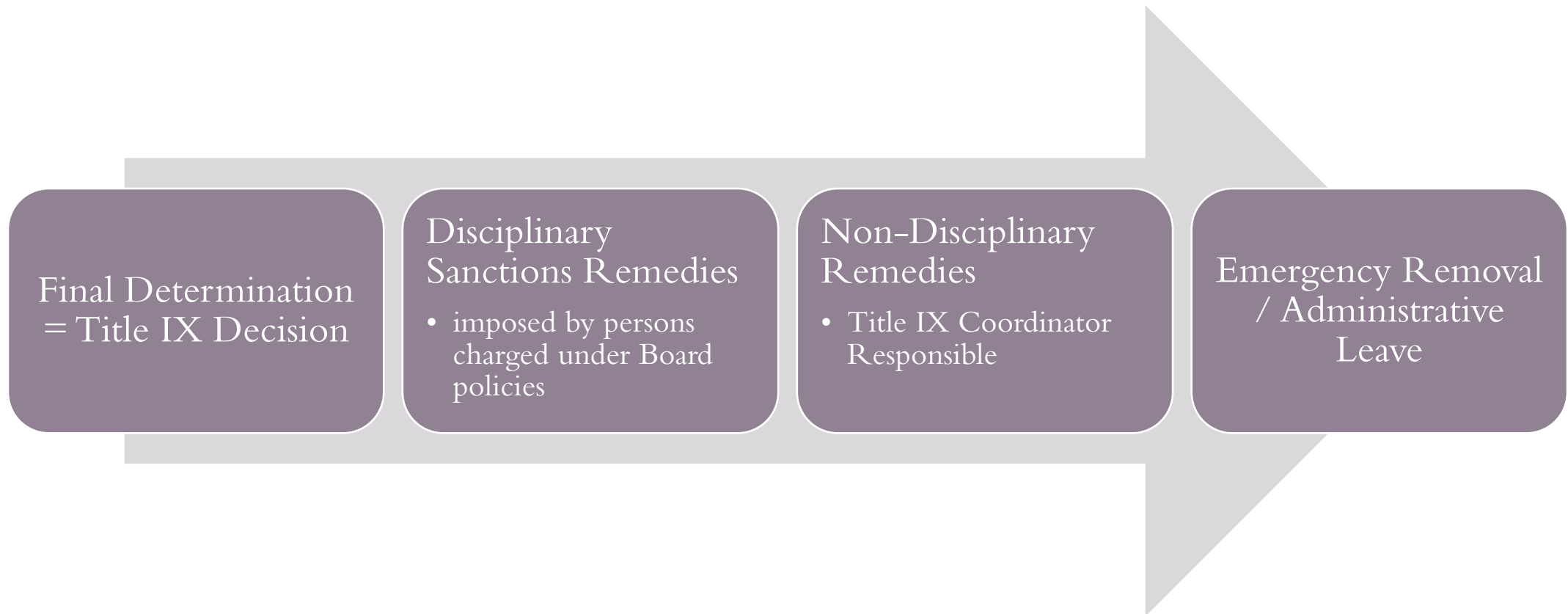
Not permitted if allegations involve an employee sexually harassing a student

Final Determination, Disciplinary Sanctions



In no case shall the district impose disciplinary consequences or sanctions against a respondent who has been accused of conduct which may constitute sexual harassment, until the Title IX grievance process has been completed.

Final Determination, Disciplinary Sanctions





RECOGNIZING SEXUAL
MISCONDUCT



EQUAL JUSTICE UNDER LA

Warning Signs or Red Flags that can Indicate Sexual Misconduct



Behavior indicators in students might include:

- Inappropriate sexual behavior or knowledge, particularly in younger children
- Late arrivals to class or excessive absences
- Changes in personality
- Increased time with one adult
- Referring to a teacher as a “friend”
- Difficulty paying attention
- Unexplained disciplinary or academic issues
- Depression or anxiety
- Self-injury (cutting, burning)
- Drug and alcohol abuse

Warning Signs or Red Flags that can Indicate Sexual Misconduct in Adults



- | | | | | |
|--|--|---|---|--------------------------------------|
| Spending more time with children than other adults | Close personal relationships with students | Singling students out for special attention or privileges | Time alone with students | Time in private spaces with students |
| Flirtatious behavior with students | Off-color remarks in class | Being too permissive with students and allowing misbehavior | Engaging in peer-like behavior with students | Giving gifts to students |
| | Oversharing personal information with students | Touching, tickling, hugging, kissing, wrestling or holding students even if they resist | Exchanging personal notes, texts, emails, or other communications with students | |



Who is Involved in Sexual Misconduct – TARGETS

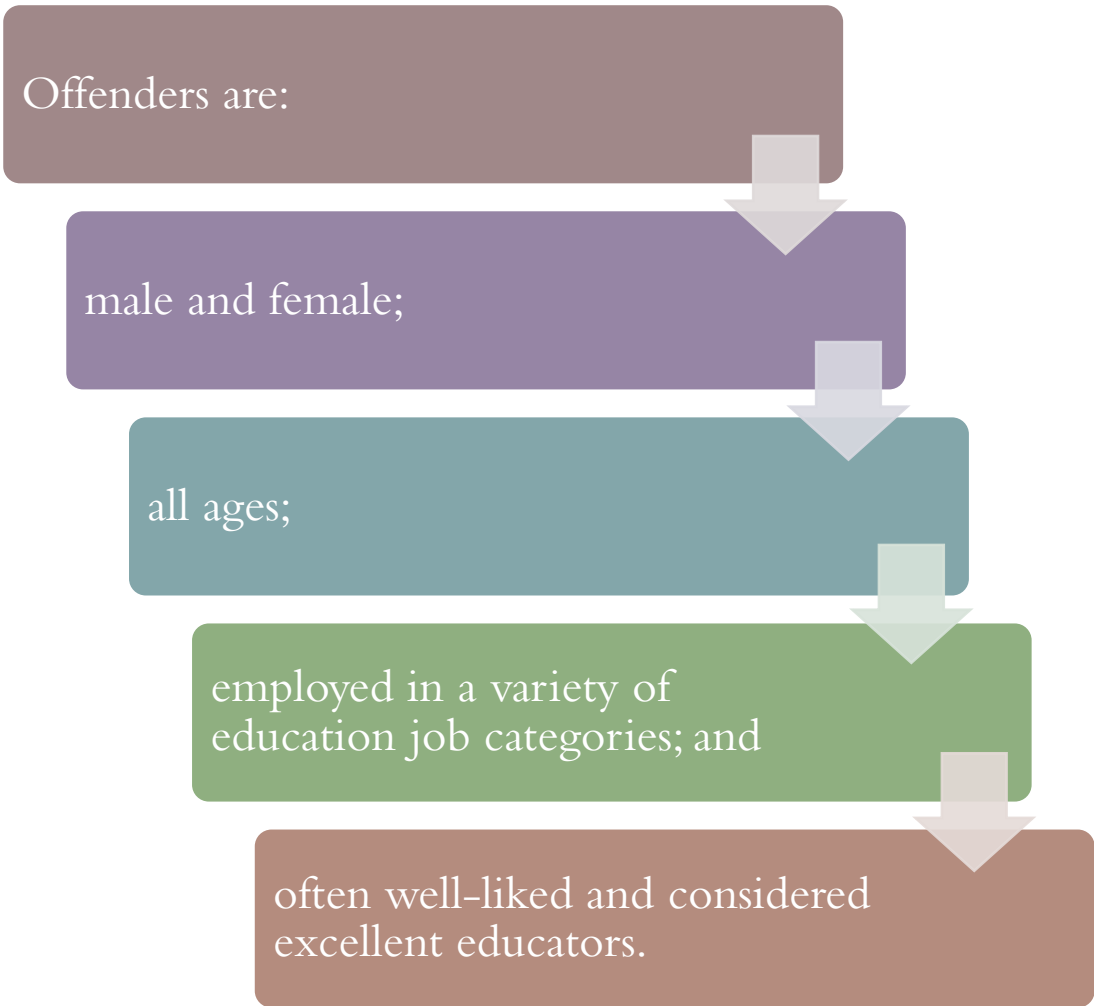
The imbalance of power inherent in the student-teacher relationship leaves students vulnerable to exploitation. Although any student can be a victim of sexual misconduct, some students are more vulnerable than others.


Most
at-risk
are
students
who:

- are estranged from their parents
- are unsure of themselves
- are engaged in risky behavior or have parents who are engaged in such behavior
- are socially marginalized
- have special needs
- have experienced prior physical or sexual abuse, and/or
- are experiencing emotional, social, or academic stressors.



Who is Involved in Sexual Misconduct - OFFENDERS





DIFFERENCES BETWEEN 2020
AND 2024 TAX REGULATIONS



1. The regulations broaden the definition of discrimination based on sex to include not only discrimination based on sex stereotypes, sex characteristics, and pregnancy or related conditions, but also (for the first time) sexual orientation and gender identity.

2. The term “sex-based harassment” also has been defined more broadly to include harassment based on sexual orientation and gender identity. Sex-based harassment creates a “hostile environment” in more situations, as well. A hostile environment exists when “unwelcome sex-based conduct ... is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient's education program or activity.”

3. Although more possible conduct may constitute sex-based discrimination or harassment, the final regulations permit more flexibility and informality in the procedures schools must use to address it “to account for variations in school size, student populations, and administrative structures.” NSBA’s public comments had asked the Department to provide some flexibility for school districts, including allowing an informal resolution processes option for some Title IX complaints, so that building personal could address harassment situations consistent with the age of the student and the nature of the allegation. Under 2024 rules:

The Department dramatically simplified the components of the grievance process each recipient must establish to address complaints of sex discrimination.

Schools may use a single-investigator model, and schools may choose to use this model in some, but not all, cases as long as it is clear in their grievance procedures when it will use this model; and

Schools may offer an informal resolution process for sex discrimination complaints unless the complaint includes allegations that an employee engaged in sex-based harassment of a student, or unless such a process would conflict with Federal, State, or local law.

4. The Department did not specifically address use of restrooms and locker rooms but did create a “de minimis” harm standard for sex separation that is allowed by existing regulations.

Current regulations allow recipients to provide separate toilet, locker room, and shower facilities on the basis of sex, so long as the facilities are comparable. 34 CFR 106.33. The new regulations clarify that such “otherwise permissible sex separation is consistent with Title IX as long as it is carried out in a manner that does not impose more than de minimis harm on affected students.” The new regulations clarify that preventing someone from participating in school (including in sex-separate activities) consistent with their gender identity causes that person more than de minimis harm.

The Department explicitly notes that it does not adopt the Federal Court of Appeals for the Eleventh Circuit’s reasoning when it determined that the statutory provision allowing schools to designate same-sex living facilities applied to bathrooms and locker rooms. The Department, instead, sided with other courts finding that the provision addresses only living facilities, and the statute’s general anti-discrimination requirements apply to bathrooms and locker rooms.

The new regulations do not address the eligibility criteria for athletic teams. Those regulation will come later.

5. The new regulations expand privacy protections for students and others involved in sex discrimination claims and investigations.

Recipients may not disclose personally identifiable information obtained in the course of complying with Title IX, with limited exceptions, such as when the recipient has prior written consent or when the information is disclosed to the parent of a minor. (The 2020 amendments included a narrower provision that prohibited a recipient from disclosing only the identity of certain individuals participating in a Title IX grievance procedure, with limited exceptions.)

A recipient's grievance procedures must require reasonable steps to protect the privacy of the parties and witnesses while the grievance procedures are implemented, provided that the steps do not restrict the ability of the parties to obtain evidence and participate in the grievance procedures.

6. The new regulations provide more explicit and broader requirements for recipients to support students and employees based on pregnancy or related conditions.

Recipients must provide reasonable modifications for students based on pregnancy or related conditions, allow for reasonable break time for lactation for employees, and access to a clean, private lactation space for students and employees.

When a student (or parents of a minor student) informs an employee of a student's pregnancy or related condition, the employee must provide the individual with information about the school's obligations to prevent discrimination.

Schools cannot disclose personally identifiable information about reasonable modifications for pregnancy or related conditions, with limited exceptions.

7. Recipients must consult with one or more members of a student's IEP or Section 504 team when a student with a disability is a complainant or respondent.

If the complainant or respondent is a student with a disability, the recipient must require the Title IX Coordinator to consult with one or more members of the student's IEP or Section 504 team, to determine how to comply with the requirements of the IDEA and Section 504 throughout the grievance procedures.

8. The Department has expanded the duties of the Title IX Coordinator.

Title IX Coordinators and others responsible for implementing the school's grievance procedure must receive training related to their responsibilities promptly upon hiring or change of position, and annually thereafter.

Recipients must maintain for seven years each notification received by Title IX Coordinator of conduct that reasonably may constitute sex discrimination under Title IX or the regulations, documentations of the actions the recipient took to meet its obligations to respond promptly and effectively to complaints.

The Title IX Coordinator may also be the decisionmaker (under the single-investigator model). Non-confidential employees are required to notify the Title IX Coordinator of conduct that might constitute sex discrimination under Title IX.

When the complainant or respondent is a student with a disability, the recipient must require the Title IX Coordinator to consult with a member of the student's IEP team.

9. The final regulations allow recipients to use a (low) “preponderance of the evidence” standard of proof to determine whether sex discrimination occurred unless the recipient uses “clear and convincing” in other comparable proceedings.

10. The scope of covered conduct may extend beyond a school's borders.

Conduct that may constitute sex discrimination is covered if it occurs under a recipient's education program or activity in the U.S., including conduct that is subject to the recipient's disciplinary authority.

A recipient has an obligation to address sex-based hostile environment under its educational program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the education program or activity or outside the U.S.

11. For the first time, the Department provides a resource including language schools can use for policies, notices, and grievance procedures, to assist with compliance before the new school year begins.

Source: National Council of School Attorneys (COSA) 042024



DISCUSSION



Sam Kerr, J.D., Ed.D.
Cassidy M. Stalley, J.D.
Lynn Jackson

Jessica Filler
ASBSD