K12 TITLE IX INVESTIGATOR

Nor Cal Relief Training Series
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2026-2027 Academic Year

Northern California ReLiEF

Title IX Consult, LLC

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01

Title IX Fundamentals

Title IX Law | Title IX Regulations

Overview

- ✓ Title IX passed in 1972
- ✓ 39 words
- ✓ Interpreted extensively through regulations and in litigation

54

YEARS

TITLE IX

No person 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.

JUNE 23, 1972 — JUNE 23, 2026

20 U.S.C. § 1681 | Education Amendments of 1972

Title IX: Purpose and Impact

Purpose

- Provide educational opportunities to women, who were denied the ability to pursue educational programs, including law and medicine, due to limitations on admissions and quotas.

Impact

- Women sport programs proactively used the legislation to challenge the presence of comparable sports teams, scholarship opportunities, and facilities.
- In more recent years, Title IX has been used to require campuses proactively address sexual harassment in all its forms.

What is Covered Under Title IX

Any action taken by an educational institution receiving federal funding that violates the prohibition against sex discrimination in their educational programs and activities.

Programs and activities has been interpreted to include:

- Recruitment and admission
- Extra-curricular activities
- Access to courses
- Financial assistance
- Athletics
- Opportunities to join groups
- Internships/vocational opportunities
- And, many more…

Other Important Title IX Coverage

Pregnancy Protections

- Since 1972, Title IX has provided coverage to support pregnant students.

Athletics

- Title IX has had a tremendous impact on the athletic opportunities offered to women at the K12 and collegiate levels.

Employment – 2020 Title IX Regulations

Title IX 2020 Regulations explicitly state that Title IX provides coverage for employees of covered educational institutions.

Although employee rights and responsibilities are normally covered under human resource policies, this requirement caused institutions to alter their policies to ensure that Title IX protections were available to employees, even in employee-employee matters.

- Extending coverage to employee rights – i.e., benefits, leaves of absence

The US Supreme Court agreed to hear two important cases related to whether Title IX covers employees and are expected to hear arguments in October 2026.

The federal circuits are split on this topic:

- 8 circuits have allowed employment-based claims under Title IX
- 3 circuits have rejected employment-based claims under Title IX

Title IX enforcement related to employment claims may shift during 2026-2027 after the US Supreme Court issues its decision.

02

Title IX Regulations

Title IX Regulations

Department of Education, Office for Civil Rights is responsible for issuing guidance related to how to enforce Title IX.

Accomplished in a variety of ways:

- Investigating a complaint
- Issuing guidance documents, often through Dear Colleague letters that detail enforcement
- Adopting regulations through the administrative process known as “Notice and Comment”

Current Title IX regulations on Sexual Harassment took effect in 2020, following the required Notice and Comment period, and are in effect today.

Regulatory Timeline

1998–1999

Important Supreme Court decisions on Title IX allowing for private cause of action and damages

2001

OCR's regulations on Title IX enforcement at educational institutions

2011–2016

OCR issues multiple Dear Colleague Letters (DCL) on enforcing Title IX

2017

OCR rescinds DCLs under Obama

2020

OCR issues Final Rule on Title IX

2024

Regulations issued, effective August 1, 2024

2025

2024 Regulations vacated and 2020 Regulations return

2020 Regulations on Title IX

Develops a procedural framework required to be followed for Title IX Sexual Harassment matters

Mired in due process rights;	Unique compared to any other campus process; and,	Required to be used ONLY in Title IX Sexual Harassment matters.

Title IX Sexual Harassment under the 2020 regulations adopted new definitions for sexual harassment conduct, which limited most state definitions related to sexual harassment.

Defines jurisdiction and clearly explains the scope of the institution's educational program or activity – more limited for K12s.

Title IX Enforcement

- Priority-driven enforcement

- Department of Education, Office for Civil Rights
  - Investigation and Resolution Agreements

- Department of Justice role is to ensure that institutions receiving federal funds comply with federal civil rights mandates

- Special Investigation Team (SIT) – April 2025

A joint enforcement unit with members from OCR and DOJ to rapidly investigate and resolve civil rights complaints in educational institutions covered by Title IX.

03

Title IX Sexual Harassment

Overview of 2020 Regulations and Key Definitions

Deliberate Indifference Standard

Educational institutions must respond in a manner that is not **deliberately indifferent** when it has actual knowledge of sexual harassment occurring in the institution's education program or activity against a person in the United States.

Failure to respond to a complaint following the Title IX process could be evidence of deliberate indifference.

Jurisdiction for Title IX Sexual Harassment

Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.
Off-campus activities covered if one (1) of three (3) requirements are met:

1. The off-campus incident occurs as part of the school's operations;
2. The school exercised substantial control over the respondent and the context of alleged sexual harassment that occurred; or
3. The incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a college.

Notice and Required Reporting to Title IX Coordinator

All employees, except Confidential Employees, have an obligation to report to Title IX Coordinator upon notice about Title IX complaint.

Confidential employees are ONLY mental health professionals with a license.

Title IX Sexual Harassment

- Conduct on the basis of sex that constitutes sexual harassment based on the following definitions:
  - Quid Pro Quo
  - Hostile Environment Harassment
  - Sexual Assault
    - Rape, Incest, Statutory Rape
    - Criminal Sexual Contact
  - Dating Violence
  - Domestic Violence
  - Stalking

Title IX Quid Pro Quo Sexual Harassment

An employee of the school/district conditioning the provision of an aid, benefit, or service of the school/district on an individual's participation in unwelcome sexual conduct.

Important to note: Must be an employee who engages in quid pro quo behavior.

Title IX Hostile Environment Sexual Harassment

Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the [school/district]'s education program or activity.

Important to note: This definition of Title IX hostile environment is a more stringent standard than the definition found at state law.

Title IX Sexual Assault

Sexual Assault

- A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
- **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

Criminal Sexual Contact (Important to Note: 2025 New Definition)

- The intentional touching of the clothed or unclothed body parts OR
- The forced touching by the victim of the actor's clothed or unclothed body parts;
- For the purpose of sexual degradation, sexual gratification, or sexual humiliation;
- Without consent of the victim;
- Including instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication.

Title IX Dating Violence

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based upon the reporting party's statement with consideration of the following factors:

(i) The length of the relationship	(ii) The type of relationship	(iii) The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

Important to note: Does not need to be sexual violence.

Title IX Domestic Violence

- Domestic Violence: A felony or misdemeanor crime of violence committed
  - by a current or former spouse or intimate partner of the victim;
  - by a person with whom the victim shares a child in common;
  - by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
  - by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
  - by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

  - Important to note – Supportive measures may be required or are recommended for non-jurisdictional matters.

Title IX Stalking

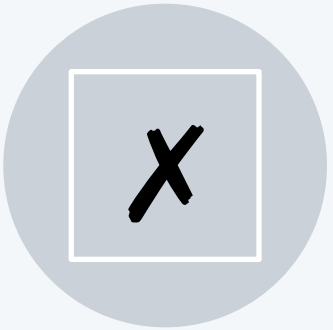
- Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to
  - Fear for the person's safety or the safety of others; or
  - Suffer substantial emotional distress.

Important to note: Definition has been interpreted to require/include:

- Two or more acts;
- Directly, indirectly, or through third-party; and
- Significant mental anguish.

Title IX Prohibited Retaliation

Negative action taken against a party, witness, or other participant in the Title IX process as retribution for their participation in the Title IX process.



A retaliation-only allegation does not have to follow the Title IX investigation process.

04

Title IX Sexual Harassment Grievance Process

Key Roles and Responsibilities in the Grievance Process

Key Parties and Roles in Title IX Grievance Process

Parties

- **Complainant** – brings a complaint allegation of sexual harassment
- **Respondent** – allegations brought against this party for potential violation of Title IX sexual harassment policy
- **Advisors** – both parties may designate an advisor to provide support through the process

Title IX Roles*

- Title IX Coordinator
- Title IX Investigator
- Title IX Decision-Maker
- Title IX Appeal Officer
- Title IX Informal Resolution Officer

*All must receive Title IX training

Title IX Coordinator in Grievance Process

- Shepherds the Title IX process
  - Receives report
  - Evaluates the complaint and holds initial meeting with Complainant
  - Supportive Measures
  - Procedure Options – Investigation, Informal Resolution
- Identifies Investigator
- Sends Notice of Allegations Letter
  - Provides supportive measures for Respondent
- Engages in regular outreach to the parties about investigation and potential delays
- Shares investigation information with the parties (or delegates to Investigator)
- Identifies Decision-Maker
- Addresses challenges based on bias or conflict of interest
- Delivers Outcome Letter to parties (or delegates to Decision-Maker)
- Processes a potential appeal

Title IX Investigator in Grievance Process

- Policy will define expectations for the Investigator
- Conducts the investigation on behalf of school/district
- Respects parties' rights under the process
- Develops (and revisits) the investigation strategy for the matter
- Gathers relevant evidence
- Creates and maintains the investigation record
- Collects the investigatory information into the proper format
- Shares the investigation materials with the parties
- Reviews feedback from the parties on the investigation file
- Drafts investigation report and shares it with parties
- Reviews draft investigation feedback from parties
- Finalizes the investigation report and shares with the parties

Title IX Decision-Maker in Grievance Process

- Permitted to be:
  - Anyone trained but NOT
    - Title IX Coordinator - EVER
    - Title IX Investigator in the same matter
- Reviews:
  - All evidence collected in the investigation
  - Parties' responses to the final investigation report
- Permitted to engage in questioning of parties or witnesses
  - Credibility
  - Seeks answers to unanswered, relevant questions
- Determines
  - Policy violation
  - Discipline
- Respects parties' rights under the process

Title IX Appeal Officer in Grievance Process

- Appeals permitted in limited circumstances
  - Dismissal from Title IX
  - Outcome
- Upon receipt of an appeal, the matter will be forwarded to the appropriate Appeal Officer
- Both parties are notified of the appeal
- Appeal standard applied to the facts
- Decision shared with parties

Title IX Informal Resolution Officer in Grievance Process

- Trained facilitators.
- Offered after formal complaint is filed.
- Parties’ participation cannot require a party to waive the right to an investigation and adjudication of a formal complaint.
- Obtains the parties' voluntary, written consent to the informal resolution process.
- Described to both parties.
- Parties agree in writing.
- Either party may end informal resolution before a formal agreement is accepted, and the matter returns to the Title IX investigation process.
- Never available when complainant is student and respondent is employee.

Title IX Advisor to a Party in Grievance Process

- Parties must be advised that they can have an advisor present for key meetings throughout the entire investigation including the party's interview.
- Parties select an "advisor of choice."
- Advisor may be, but need not be, an attorney.
  - Can select a potential witness in the investigation; may limit testimony of witness.
- Advisor provides advice and counsel to the party during the process.
- Advisor has a more active role in cross-examination if a hearing takes place.
  - K12s are permitted, but not required, to hold hearings.

Title IX Grievance Process – Fairness Requirements

Title IX grievance process must ensure any person with a Title IX role:

- Must not have a conflict of interest;
- Must be impartial; and,
- Must not engage in bias in decision-making process.

Responsibility to enforce these requirements falls to the Title IX Coordinator.

No Conflicts of Interest

Conflict between role in the Title IX process and personal/professional responsibilities.

Does the Title IX administrator have competing responsibilities?

Conflicts may arise because of professional or personal roles.

Always review the relationship to parties and/or witnesses.

Actual conflict may exist OR a party may perceive a conflict when one truly does not exist.

Does it matter?

Avoiding Bias in Title IX Process

- Bias Definition: Bias is a disproportionate weight or inclination in favor of or against an idea, thing, or group, usually in a way that is closed-minded, prejudicial, or unfair. It stems from personal opinions, cognitive shortcuts, or societal conditioning rather than objective facts.
- Conscious/Explicit
  - Discriminatory intent
  - Stated preferences
- Unconscious/Implicit
  - For the most part, most people are unaware of these drivers
  - Developed over a period of time and can influence many factors
  - Shortcuts developed by the brain and often play a role in:
    - Immediate response to conflict
    - Often mimics fear responses
    - Examples include confirmation bias, affinity bias, and stereotyping

Impartiality in Title IX Process

Be neutral – neither pro-Complainant nor pro-Respondent.

Consider all of the evidence as presented.

Maintain an open mind regarding potential conclusions.

05

Title IX Sexual Harassment Grievance Process

Key Steps in the Grievance Process

Overview of the Title IX Grievance Process

Initial Complaint Receipt

- Notice of sexual harassment to Title IX Coordinator
- Supportive measures offered to Complainant
- Offer of formal complaint, explaining the options on how to proceed
- Institute emergency removal, if appropriate
- Prepare and deliver the Notice of Allegations letter sent to parties to initiate the investigation process
- At the initiation of the process, the presumption is that respondent did not violate policies and duty is on District to investigate

Investigation Process

- Interviews of parties and witnesses and gather other information that is relevant to the investigation
- Sharing of investigation file – 10-day review period
- Draft investigation report – and then 10-day review period
- Finalize investigation report

Decision-Maker Process

- Evaluate final investigation report
- Request input from parties – 10 days to provide
- Engage in necessary follow-up
- Issue outcome letter with policy violation and discipline decisions

Title IX Grievance Process Initiation

- Report of incident to employee or an employee witnesses an incident
- Employee notifies Title IX Coordinator, as required
- Coordinator reaches out to Complainant and holds a Title IX **intake meeting** to offer formal complaint grievance process and supportive measures
  - Title IX Coordinator may also initiate an investigation
- Upon receipt of a formal complaint, Title IX Coordinator initiates the Title IX grievance/formal investigation process
  - Complaint can be received in writing, by email, by phone, or by other means designated at the K12 District
- OR, Coordinator may dismiss the matter from the Title IX process for limited reasons

Intake Meeting with Complainant

Offer of Title IX Formal Process

- Explain formal process, including the need for a formal complaint filing
- Explain the process and steps to resolution
- Discuss emergency removal
- Role of the advisor
- Different roles – Investigator, Decision-Maker
- Timelines
- Answer any questions
- Advise of the Title IX Coordinator's duty to initiate an investigation in certain circumstances

Offer of Supportive Measures

- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available;
- Without fee or charge to the complainant or the respondent;
- Designed to restore or preserve equal access to the District's education programs or activities;
- Without unreasonably burdening either party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment.

Review of Formal Complaint and Potential Dismissal

Is this matter truly Title IX or not?

Mandatory dismissal

- Would not constitute sexual harassment as defined in regulations;
- Did not occur in education program or activity; or,
- Did not occur against a person in the U.S.

Permissive dismissal

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complaint or allegations;
- Respondent is no longer enrolled or employed by school district; or,
- Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination.

Title IX Coordinator Initiates the Title IX Investigation

Title IX Coordinator may decide to proceed with an investigation:

- Fundamental consideration:

Could this be evidence of deliberate indifference if an investigation not initiated?

- 2020 regulations provide limited guidance on when a Title IX Coordinator MUST initiate an investigation; but,

- Prior guidance gave some insight that could be valuable:
  - Use of a weapon; or,
  - Respondent has been accused in the past of the same/similar behavior.

Emergency Removal Process

01

Step One

Conduct a prompt and individualized safety and risk analysis.

02

Step Two

Immediate threat to physical health or safety of any student or other individual arising from the allegations of sexual harassment is identified.

03

Step Three

Evaluate the applicability of disability laws to the removal decision.

04

Step Four

Consider the appropriateness of supportive measures in lieu of an emergency removal.

05

Step Five

Provide the respondent with notice and an “immediate” opportunity to challenge the emergency removal.

Title IX Coordinator After Investigation Starts

- Notice of Allegations sent to the parties;
- Supportive measures offered to Respondent (if not done previously);
- Coordination of interviews for Investigator (external);
- Collection of school-based documentation and/or data as needed;
- Ongoing support to both parties
  - Checking in
  - Revising supportive measures; and,
- Overseeing timeline to ensure deadlines are met.

After the Investigation Ends

- All investigation materials are shared with the parties
  - 10-day review period and comments/questions/inquiries sent to Investigator
- Sharing of the draft investigation report with the parties
  - 10-day review period and comments/questions/inquiries sent to Investigator
- Delivery of the final investigation report to parties
- Sends proper documentation to Decision-Maker who does outreach to the parties for any comments/questions/inquiries
  - 10-day review period
- Delivery of the Outcome Letter, including proper appeal language
- Designation of an Appeal Officer, if necessary
- Delivery of Appeal Outcome letter, if necessary

06

Title IX Investigator Role

Overview of Investigator Responsibilities

- Respond appropriately to allegations
- Organize investigations
- Conduct interviews
- Review any documentary evidence
- Evaluate evidence for relevance
- Burden of Proof
- Share evidence
- Prepare draft and final reports

Title IX Grievance Process

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Decision-Maker Process

- Evaluate final investigation report
- Request input from parties – 10 days to provide
- Engage in necessary follow-up
- Issue outcome letter with policy violation and discipline decisions

Title IX Allegations

- Review the Notice of Allegations letter for detailed information about what occurred and when
- Party and advisor information
- Potential information regarding witnesses

- After understanding the allegations, review the District/School policy to determine what must be proved in order to find a violation or disprove a violation
  - Review definitions of behavior under Title IX
- Note two important fundamentals of Title IX investigations:
  - Respondent is presumed to have not violated school policies; and
  - The duty is on the district/school to determine if policies were violated.

Title IX Investigator Policy-Required Conclusions

Review the Title IX grievance process

What information will you communicate in your investigation report?

Will you provide:

- Conclusions of fact?
- Recommended conclusions of fact?
- Credibility determinations – recommendations for Title IX Decision-Maker?
- Recommended policy violations for Title IX Decision-Maker?

Organize the Investigation

- Information that has been gathered
    - Videos
    - Student Statements
    - Photos/Messages
- Potential evidence that could violate procedural requirements
    - Remove from the file and do not review
        - Example: interviews of parties that did not include access to an advisor
- Organize the Investigation
    - Start with what you have
        - Documents from the parties
        - School-owned information – videos; records of attendance at events; teacher/staff notes
    - What else is needed?

Interviewing Parties and Witnesses

- Many investigations reference materials that no longer exist (ex. Snapchat)
- Many investigations involve evidence that you cannot access (ex. Videos and photos that might violate Child Pornography laws)

- Interviews often are the basis for the entire investigation
- Order of interviews can often present a strategic opportunity for Investigator

  Complainant – Witnesses – Respondent

- Set expectations
  - Recording or note-taking?
  - In-person or online?
  - No party or witness can be promised confidentiality as the entire investigation file is shared in the Title IX process

Interview Process

- Parties are entitled to have advisors present
  - Remember: Advisor role is to advise party, NOT to present evidence or ask questions
  - Parent can also attend
- Witnesses are not entitled to advisors
- Minors are permitted to have parents present
- Provide all the preliminary information upfront
- Be prepared to respond to questions on process or refer to the Title IX Coordinator
  - Know what district/school policy says about process

Capturing Interviews for Report Writing

- Review policy to determine what is permitted
- Recordings and transcription
- Note-taking by Investigator or notetaker
- Know state law on permissions required for recordings

- Review of interview transcripts/summaries in the evidence review process

Review Documents

- Submitted by parties and witnesses
- Provided by school
- Sought by Investigator

Relevance of Evidence

- Not required to consider everything submitted

- Relevance defined
  - Evidence is legally relevant if it has any tendency to make a fact of consequence to the determination of the case more or less probable than it would be without the evidence.

    Federal Rule of Evidence 401

- Investigator analysis of relevance

Rape Shield Exception

Sexual behavior questions and evidence are IRRELEVANT except if they are:

1) offered to prove that someone other than the respondent committed the conduct alleged by the complainant;
2) if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

TIXGP: Burden of Proof



Preponderance of the evidence



Clear and convincing

Sharing Evidence with Parties

- All relevant evidence must be shared
  - Online file access
  - Inspection of file

- 10-day wait period completed

- If information is received, consider what steps are necessary

Reviewing Submissions from Parties [Evidence]

- Options upon receipt of information from a party/advisor:
  - Incorporate it into the report
  - Attach to report
  - Return to the investigation

- Relevance still required

- Investigator has discretion as to next steps

Draft Investigation Report

- Synthesis of information
- Categories must include
  - Conclusions may reach – factual findings
  - Conclusions may not reach* –
    - Credibility conclusions
    - Policy violation
    - Discipline

*Must be reached by the Title IX Decision-Maker

Investigation Report Contents

- Regulations do not articulate what must be in the investigation report.
- However, the Title IX Decision-Maker must issue an outcome that includes:
  - written determination regarding responsibility with:
    - findings of fact;
    - conclusions about whether the alleged conduct occurred;
    - rationale for the result as to each allegation;
    - any disciplinary sanctions imposed on the respondent, and
    - whether remedies will be provided to the complainant.

Reviewing Submissions from Parties [Draft Report]

- Options upon receipt of information from a party/advisor:
  - Incorporate it into the report
  - Attach to report
  - Return to the investigation

- Relevance still required

- Investigator has discretion as to next steps

Final Investigation Report

- Ensure full 10-day period for review is completed
- Review any information submitted by the parties
  - Incorporate it into the report
  - Attach to report
  - Return to the investigation
- Issue Final Investigation Report
  - To parties
  - Title IX Coordinator
  - Title IX Decision-Maker to take next steps

Title IX: Appeal Grounds

Procedural Review

Procedural irregularity in the Title IX grievance process that materially affected the outcome.

New Information

Newly discovered evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could materially affect the outcome.

Conflict of Interest or Bias

Due to a bias or conflict of interest by the Title IX Coordinator, investigator, or decision-maker that materially affected the outcome.



Thank You

Questions? We're here to help.

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