

The New Title IX Final Rule

2020-2021

What is the Title IX Final Rule?

- As of August 14, 2020, the Title IX Final Rule is in effect for K-12 and colleges/universities, adding specific requirements regarding sexual harassment.
- **The rule requires that schools respond whenever any employee has notice of sexual harassment**
 - Witness to sexual harassment
 - Reported by a student or another employee
 - The person who experienced sexual harassment

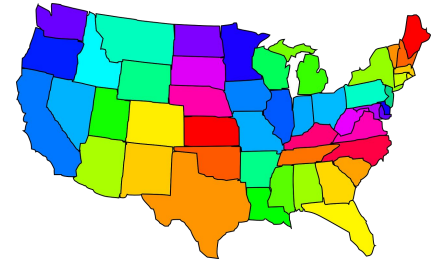
The Definition of Title IX Sexual Harassment

The Final Rules defines sexual harassment as any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect.

- *Quid pro quo* harassment by a school employee
 - “Something for Something” - e.g., sexual favors to get a good grade
- Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person’s equal educational access
- Any instance of sexual assault, dating violence, domestic violence or stalking (Violence Against Women Act - VAWA)

When & Where does this Rule Apply?

- At school
- During any school activities
 - Field trips
 - Athletic events
 - Dances
- The activity must occur in the United States
- Both parties (the complainant/victim & the respondent/accused) must be enrolled or employed at Kerman Unified School District



How To Report

- All reports go to the Title IX Coordinator: Pam Sellick
 - Can email the report: sfp.director@kermanusd.com
 - Can phone in the report: (559) 843-9057
 - Can report by mail: Kerman Unified School District, 15218 W. Whitesbridge Avenue, Kerman CA 93630
 - Can report in person: Kerman Unified School District Office
- The report can be made anytime

What Happens when a Report is Made?

- Schools must respond promptly
- Supportive measures must be provided for the complainant and respondent during the grievance process
 - Counseling
 - Extension of deadlines
 - Modification of schedule
 - Campus escort services
 - Increased monitoring
 - No contact order
- The Title IX team begins the grievance process

KUSD Title IX Team

- Title IX Coordinator: Accepts initial complaint, implements remedies
 - Pam Sellick
- Investigators: Investigate the complaint and provide written findings
 - Assistant Principals at each site
- Decision Makers: Render a decision
 - Principals at each site
- Appeal Decision Maker: Addresses appeal request and renders a decision
 - Human Resources Department
- Informal Process Facilitator: If an informal process is feasible
 - Pam Sellick

Informal Resolution

- The Final Rule allows a school, in its discretion, to choose to offer and facilitate informal resolution options, such as mediation or restorative justice as long as both parties given voluntary, informed, written consent to attempt informal resolution.
 - The Informal Process Facilitator will be the Title IX Coordinator
- Note that this does not apply in the case of an employee accused of sexually harassing a student.

The Grievance Process

- All parties will be given written notice of the allegations, an opportunity to select an advisor, and an opportunity to submit and review evidence throughout the investigation.
- The respondent is presumed “not responsible” during the grievance process.
- The investigator (assistant principal) will collect evidence from all parties involved.
- The burden of proof is on the school, not the parties.
- Parties will be given at least 10 days to inspect, review, and respond to all evidence directly related to the allegations prior to the completion of the investigative report.

Grievance Process – Protected Information

- No information protected by a legal privilege (attorney-client, doctor-client) can be used during the investigation unless the person holding that privilege has waived it.
- Neither a party nor the school is allowed to seek, permit questions about, or allow the introduction of evidence that is protected by a recognized privilege.

The Grievance Process – Investigative Report

- An investigative report will be written that summarizes the relevant evidence.
- The final decision will be based on the preponderance of evidence gathered during the investigation.
- Parties will have at least 10 days to review and provide a written response to the investigative report.

Grievance Process – Final Decision

- A written determination the with an analysis as to how the conclusion was reached will be provided by the Decision Maker (Principal).

Appeals

- All parties will have the opportunity to appeal a final determination.
- An appeal can be filed on the following bases:
 - procedural irregularity,
 - newly discovered evidence, or
 - bias of the Title IX personnel that affected or could affect the outcome of the matter.
- A covered entity may also add other rights to appeal, so long as the other bases are available to all parties.
 - Covered entities may, in their discretion, dismiss a formal complaint or allegations therein
 - if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein,
 - if the respondent is no longer enrolled or employed by the institution, or
 - if specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint.

Remedies & Sanctions

- Depending on the final decision, the remedies (for complainant) and disciplinary sanctions (for respondent) may include:
 - Counseling
 - Change of class schedule
 - Detention
 - Involuntary transfer to an alternative education program
 - Suspension
 - Expulsion

Retaliation

- Protection from retaliation will be provided for any individual that participates in a Title IX grievance process.
- The exercise of rights protected under the First Amendment does not constitute retaliation.
- Schools must not restrict rights protected under the U.S. Constitution, including first amendment, fifth amendment, and fourteenth amendment, when complying with Title IX

Reasons for Dismissal of Grievance

- The school must dismiss the formal complaint for the purposes of sexual harassment under Title IX, if
 - the conduct alleged would not constitute sexual harassment under Title IX if proved,
 - did not occur as part of an education program or activity, or
 - did not occur in the United States

Note that the dismissal does not preclude the school from taking action under its code of conduct or policies.

Rape Shield Protections

- Evidence about the complainant's prior sexual behavior will be deemed irrelevant unless:
 - It is offered to prove that someone other than the respondent committed the alleged misconduct or
 - Offered to prove consent

A red square with a white border, centered on a white background. Inside the square, the word "Questions?" is written in white, bold, sans-serif font.

Questions?

Resources

- US Department of Education Title IX Final Rule Overview
<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-overview.pdf>
- Summary of Major Provisions of the Department of Education's Title IX Final Rule
<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>
- Office for Civil Rights (OCR) Blog - Title IX New Rule
<https://www2.ed.gov/about/offices/list/ocr/newsroom.html>
- OSS Webinar Series
 - Session 1: <https://vimeo.com/445069884/d40a78037c>
 - Session 2: <https://vimeo.com/445069885/5f0d521573>
- Keenan Title IX Compliance Overview
- F3 Law Title IX Regulations: [Title IX Workshop](#)