

THE SUPERINTENDENT'S GUIDE TO THE
2024 Title IX Rules



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Introduction

The new Title IX regulations go into effect on August 1, 2024. The rules expand the scope of prohibited conduct schools must address, add flexibility to the grievance process, and change some required actions schools must take to comply with Title IX. Chatter surrounding the new rules may be raising questions and your heart rate. This Guide will help you respond to questions and keep your cool. We have included a clear outline of what is and is not included in the new rules, a Q&A addressing new requirements and anticipated points of confusion, a checklist of steps to prepare for implementation, and a glossary of key terms.

While the guidance and rules related to Title IX seem to change with each administration, your district's commitment to an educational environment free from discrimination and harassment based on sex is constant. Ensuring that students can learn and develop in a safe and welcoming school continues to be Title IX's focus, even when procedures and definitions are revised. Use this Guide to help your team prepare to comply with the new requirements and to prevent and address sex discrimination and harassment.

Separating Truth from Fiction: What the 2024 Rules Do and Do Not Do

TRUE

- ✓ All sex discrimination, not just sexual harassment, must proceed through the Title IX grievance process.
- ✓ Codifies that sex discrimination encompasses discrimination against LGBTQI+ individuals.
- ✓ Expanded definition of sex-based harassment means the Title IX grievance process applies to additional misconduct.
- ✓ Includes explicit protections for pregnant and parenting students and employees.
- ✓ Simplifies the grievance process significantly for K-12 schools and provides greater flexibility.

FALSE

- ✗ Does not require schools to allow students to participate in sports teams based on gender identity.
Athletics will be addressed in a separate rule that has not been finalized or released.
- ✗ Does not eliminate due process protections for Respondents.
- ✗ Does not remove codification of First Amendment protections from the rules.



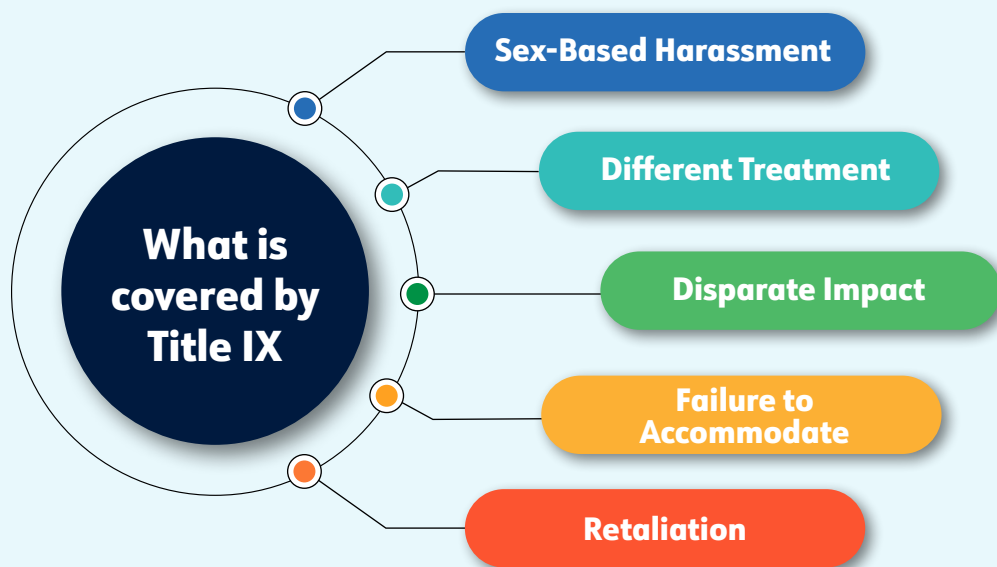
Title IX Overview FAQ

What is covered by Title IX?

Since 2020, schools have been laser-focused on responding to allegations of sexual harassment because that was the central concern addressed in the prior federal rules. But sexual harassment is only one piece of the sex discrimination puzzle.

Title IX prohibits all sex discrimination in your education programs or activities. And the 2024 Title IX regulations require that schools use the grievance process to address allegations involving any of the following five types of sex discrimination:

- 1. Sex-Based Harassment** – unwelcome conduct based on sex, including quid pro quo harassment, hostile environment harassment, sexual assault, dating violence, domestic violence, and stalking.
- 2. Different Treatment** – when an individual or group of individuals is treated differently because of their sex. For example, in the athletics context, if the girls’ basketball team has inferior equipment or fewer coaches than the boys’ basketball team, despite having a similar or greater number of players.
- 3. Disparate Impact** – when a facially neutral policy, rule, or practice has a disproportionate impact on students of a particular sex and the school does not have a substantial legitimate justification for using that policy, rule, or practice. For example, even if a school’s dress or grooming code is facially neutral, a particular aspect of it may result in a disproportionate amount of discipline toward one sex or the other. Or, a school might use a single criterion to identify students for a gifted program that results in many more female students being identified.
- 4. Failure to Accommodate** – failure to provide a reasonable accommodation, such as breaks during class or changes in schedule, to a student who is pregnant or has a pregnancy-related condition.



5. Retaliation – action by a peer or employee and aimed at interfering with a person’s rights under Title IX, including retaliation against any individual who, in good faith, makes a report or complaint, serves as a witness, or otherwise participates in an investigation or proceeding under your school’s Title IX grievance process. Title IX also prohibits retaliation against individuals for refusing to participate in your Title IX process but allows schools to require employees to participate in an investigation. Examples of retaliation include intimidation, threats, coercion, rumor spreading, ostracism, assaults, destruction of property, unjustified punishments, or unwarranted grade reductions.

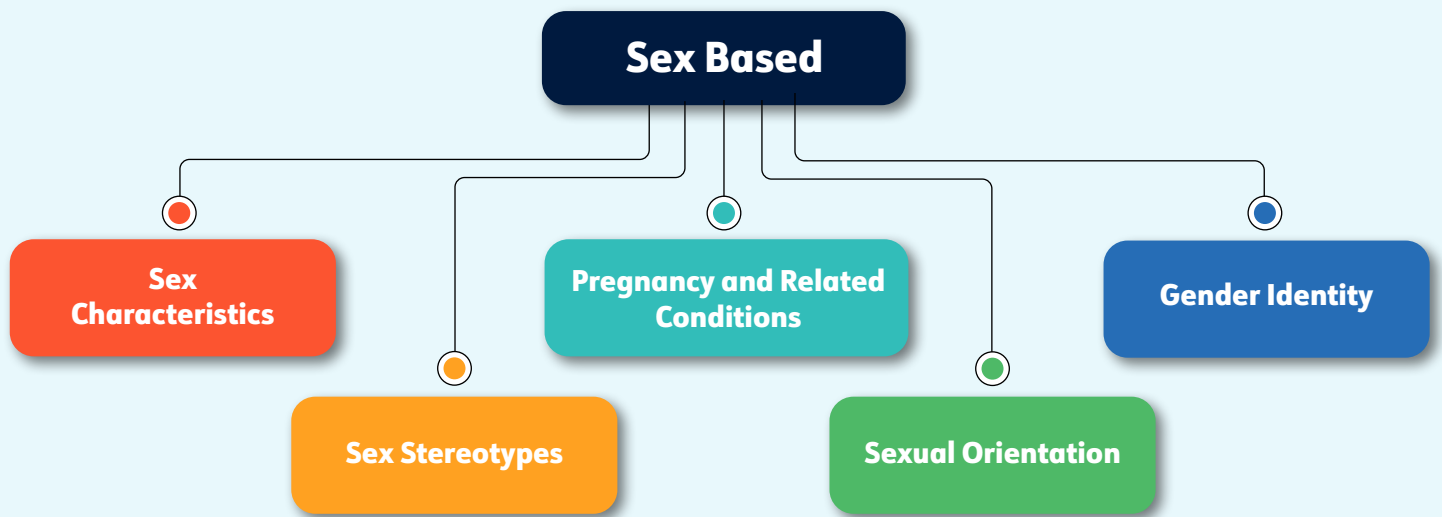
What does sex-based mean?

For the first time, the regulations codify that discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

What do the new LGBTQI+ Protections do?

The 2024 Title IX regulations explicitly define the term “sex” under Title IX to include sexual orientation and gender identity. While this is the first time that the term “sex” has been defined through the formal rulemaking process to include LGBTQI+ status, the Office for Civil Rights (“OCR”) has taken this position for years through its informal guidance—including under both the Trump and Biden Administrations.

The major change in the new rules is a “de minimis harm” test for most separation of students based on sex. Under this test, the rules prohibit the separation of students based on sex if separation results in more than minimal harm. This test applies to sex separation such as intimate facilities, classes, and dress and grooming/appearance codes. The rules state that refusing to allow a student to participate in sex-separate activities aligned with their gender identity always causes more than a de minimis



harm. The de minimis harm test does not apply to sex-separate athletic teams. In practice, this means that the rules require schools to allow a transgender female to participate, for example, in the girls' choir but not the girls' basketball team.

Note: *The Department of Education issued a proposed rule in April 2023 that would create a new test for athletic team participation based on gender identity, but the Department has not finalized that rule and is unlikely to do so before the November 2024 Presidential election.*

What are the new protections for pregnant and parenting students and employees?

The new rules also expand protections for pregnant or parenting students, employees, and applicants, as well as additional obligations on the part of a school to prevent sex discrimination and ensure equal access to the school's education program or activity. Students who are pregnant or have pregnancy-related conditions (which include termination of pregnancy or recovery from termination of pregnancy) are entitled to voluntary reasonable accommodations or modifications following an interactive process similar to the disability accommodation process. The regulations also include provisions related to leave and required lactation space for both students and employees, as well as training and notification requirements for all employees.

Beyond Title IX, remember the PUMP Act, the Pregnant Workers Fairness Act, the Pregnancy Discrimination Act, and state law have overlapping and additional requirements related to prohibited discrimination and accommodations for pregnant or parenting students and employees.

What do the new grievance procedure requirements look like?

While the scope of allegations that must go through your Title IX grievance process has expanded, that process is simplified and schools have more flexibility. Here are some examples:

Written, signed complaints are no longer required. A complaint can be an oral or written request for the school to investigate and make a determination about alleged sex discrimination.

You are no longer required to have a separate administrator be the decisionmaker. The Title IX Coordinator, investigator, and decisionmaker can be the same person. (Though we recommend a separate investigator/decisionmaker from the Title IX Coordinator role in most cases.)

Schools are no longer required to provide parties with separate 10-day review periods for the evidence and the investigation report.

If your investigator and decisionmaker are the same person, a separate investigation report is not required.

Schools have options for determining the credibility of parties and witnesses. Written cross-examination is no longer required.

The previously expansive written determination is streamlined, requiring only the conclusion of whether sex-based discrimination occurred and the rationale for the determination.

There is no longer a separate appeal process. You simply need to follow the same process used for comparable complaints (e.g., complaints of discrimination based on a different protected status), if any.

Remember, with great flexibility comes great responsibility. Schools must make local decisions and write them into their policies or grievance procedures to comply with the new rules.

Should we consider the use of informal resolution?

Yes! Informal resolution is a valuable tool for schools that allows the parties to resolve a dispute without the grievance process. The new rules allow greater flexibility for when you can offer informal resolution. A school may now offer informal resolution to the parties with or without a complaint that initiates the grievance process. Importantly, however, you may not offer it when the complaint alleges sex-based harassment and the respondent is an employee. Informal resolution must be conducted by a trained facilitator.

When can a school discipline or remove a student alleged to have engaged in sex-based discrimination?

When a student or employee is accused of sex discrimination, including sex-based harassment, the Title IX rules require that the grievance process, including any appeal, be completed **before** any disciplinary sanctions can be imposed. Since Title IX is a federal law, any state law that directly conflicts with this requirement is preempted. In other words, even if a student is alleged to have engaged in conduct that could constitute a mandatory removal or expulsion offense under applicable state law, the school must first complete the grievance process and determine whether the conduct occurred before it can proceed with disciplinary consequences.

However, the rules allow for emergency removal of a student if, after conducting an individualized safety and risk analysis, the school determines there is an imminent and serious threat to the health or safety of any person arising from the allegations of sex-based discrimination that justifies removal. Previously, the rules required there to be an imminent or serious threat to *physical* health or safety. With the removal of the word “physical,” a school can now also consider whether there is an imminent or serious threat to the mental or emotional health or safety of a person.

Emergency removals do **not** modify any other due process rights a student may have under other federal law such as the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, or applicable state laws. Schools must ensure students are provided with these state and federally-protected rights before exercising an emergency removal, if applicable.

Importantly, placing an employee on administrative leave is **not** prohibited and can be done prior to completion of the grievance process in accordance with any applicable state laws or your local policies.

What are supportive measures and what role do they play in the process?

Supportive measures are individualized measures that are free, non-disciplinary, nonpunitive support offered to both the complainant and the respondent, as appropriate and reasonably available. Supportive measures should be designed to restore or preserve an individual’s access to the school’s education programs or activities, protect the safety of all parties or the educational environment, and provide additional support during the Title IX grievance process or informal resolution process. Supportive measures cannot unreasonably burden either a complainant or respondent. Actions such as suspension or expulsion are inherently unreasonably burdensome and cannot be used as a supportive measure. If the school believes that a student poses an imminent risk of harm, the school must conduct an Emergency Removal. Your school’s Title IX Coordinator is responsible for offering and coordinating supportive measures.

But what if...

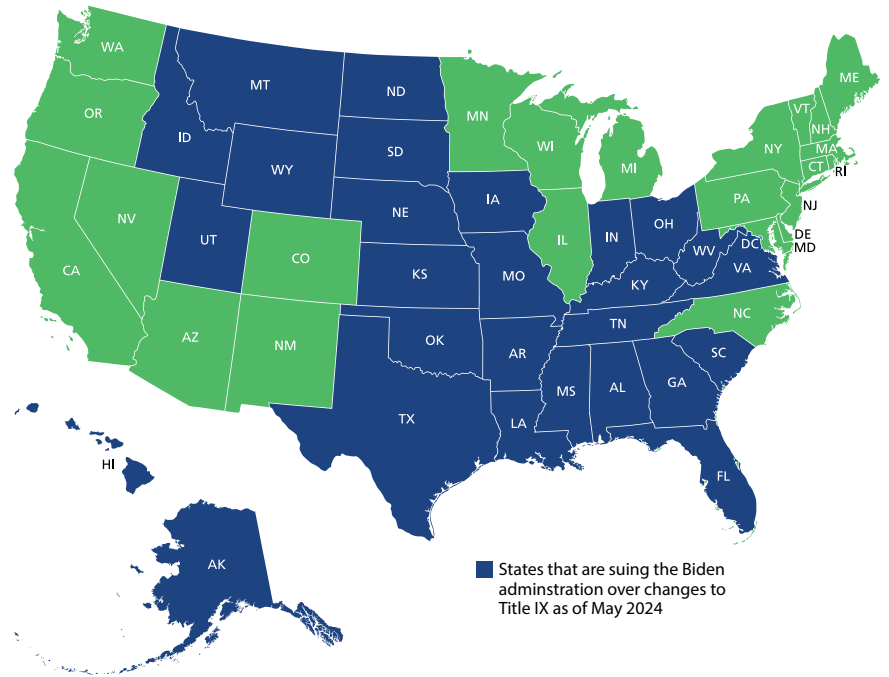
...my state has a conflicting state law?

Several states across the country have enacted state laws that differ from the current regulations. The Department of Education, in the Preamble, addressed multiple questions about what to do in the event of a conflict with state law. The Department repeatedly referred to section 106.6(b) which states: "The obligation to comply with Title IX and this part is not obviated or alleviated by any State or local law or other requirement that conflicts with Title IX or this part." This comes from the U.S. Constitution, which states that, in the event of a conflict between federal and state law, federal law prevails. While school districts should always follow both state and federal law when they can, the Constitution and this provision of the rules make clear that the federal rules take precedence over state law when there is a direct conflict.

Your school district's receipt of federal funds (including IDEA, Title I, and the free and reduced lunch program, to name a few) is conditioned on compliance with Title IX, Title VI, and related civil rights laws. The Department of Education's Office for Civil Rights enforces these statutes and their implementing regulations through investigations, audits, and resolution agreements/monitoring. This means that failure to comply with the new Title IX regulations could result in an OCR investigation or audit. The ultimate penalty for failure or refusal to comply is loss of federal funds.

...my governor or state education agency directed schools not to implement the new rules?

As with state laws, the new rules control over any directive from a state official to disregard the new rules. By asking you not to comply, your state official is asking you to risk an OCR investigation or audit



and, ultimately, to put your district's federal funds at risk. You should follow the political developments in your state, consult with your school board, and obtain advice from your legal counsel.

...my state has filed a lawsuit?

Several states have filed suit asking a court to enjoin enforcement of some or all provisions of the new Title IX rules. Unless and until a court issues an injunction that covers your state or school district, there is a legal risk in refusing to implement the Title IX rules. Failure to implement or comply with the rules could result in a complaint to OCR with a potential for OCR investigation and audit. You should follow the legal developments in your state, consult with your school board, follow Board-adopted policies, and obtain advice from your legal counsel. **Importantly, you should keep working toward the August 1 implementation deadline, even if an injunction is issued, as injunctions can be lifted with little or no notice, and OCR is highly unlikely to provide a grace period to school districts that have failed to prepare for implementation.**

Your Action Plan for the August 1 Implementation Deadline

A Scheduled Checklist

Your school district has a lot to do before the August 1 implementation date. We've taken the essential tasks and turned them into a scheduled checklist that you can use to ensure your district is ready to hit the ground running on August 1!

JUNE 2024	
<input type="checkbox"/>	Reevaluate and assign Title IX team personnel
<input type="checkbox"/>	Draft revised notice of nondiscrimination (check this one off your list by using the example included in this guide!) & update handbooks, job applications, website, etc. with new notice
<input type="checkbox"/>	Identify all District policies and procedures to update (see below for ideas)
<input type="checkbox"/>	Identify outside resource (such as school board association, outside counsel, etc.) to provide updated policies & procedures or begin drafting updated ones
<input type="checkbox"/>	Meet with stakeholders to address decision points regarding Title IX policy and procedures
<input type="checkbox"/>	Identify resource for templates, checklists, and other helpful forms. Pro-tip: Check out AASA and T&H's 2024 Title IX Guidebook for K-12 Schools . If drafting in-house, prepare them now
<input type="checkbox"/>	Identify and schedule training for your Title IX team (see Training section below for more details)
<input type="checkbox"/>	Identify or prepare all employee training

JULY 2024	
<input type="checkbox"/>	Finalize and publish all policies and procedures (if using an outside resource, timing may depend on them)
<input type="checkbox"/>	Finalize templates/forms
<input type="checkbox"/>	Provide practical training to Title IX team members on techniques, updated policies, procedures, and new templates/forms (see resources identified above)
<input type="checkbox"/>	Publish updated notices of nondiscrimination, including in handbooks and on websites
<input type="checkbox"/>	Make a plan to train all employees
<input type="checkbox"/>	Confirm record-keeping requirements are aligned
<input type="checkbox"/>	Consider publishing notices for pregnancy and parenting (e.g., lactation spaces, right to request accommodations)
<input type="checkbox"/>	Identify lactation spaces and other available accommodations for pregnant & parenting students

Budget for & Schedule Key Trainings

The new regulations require annual training for your Title IX Team, all employees, and confidential employees (if you choose to designate any).

Your Title IX Team

Your Title IX team is composed of your Title IX Coordinator & their designees, investigators, decision-makers, appellate decisionmakers, anyone responsible for implementing the grievance procedures or who has authority to modify or terminate supportive measures, and informal resolution facilitators. Each person on your Title IX team must be trained on specific topics. The amount of time this takes will vary by role.

T&H has a variety of training options, including [virtual training options](#) for Title IX Coordinators (and their deputies and designees), Investigators/Decisionmakers (including appellate ones), and Informal Resolution Facilitators, as well as [options that can be customized for your district](#).

There are also great free resources available for Title IX Coordinators to get you started, including the [Title IX Tips](#) blog and [webinars](#) from T&H.

All Employees

Training for all employees is essential so that staff understand their responsibility to report information about conduct that reasonably may constitute sex discrimination to the Title IX Coordinator, which is the first step to enabling the Coordinator to address such conduct and ensure your district operates free from sex discrimination.

T&H's all employee [video training](#) can be pre-ordered now for release July 1, 2024.

Review & Update Key Policies

Overarching Issues

As you begin to update your policies, there are several things to keep in mind:

- The rules contain detailed requirements but often leave implementation details to your local policies and procedures.
- Very little must be in actual Board-adopted policy, but a lot must be **in writing** in your local procedures.
- If, like most school districts, you subscribe to a policy service through your state school board association or other organization, it is important to remember that their model policies are necessarily broad to address the needs of all school districts (regardless of size or administrative structures). That means it's up to you and your team to:
 - Make sure details like deadlines and defined terms are in your policy.
 - Ensure it is customized for your community's needs.
 - Ensure it effectively and efficiently fits within your administrative structure.

As you customize your policies and develop your procedures, don't forget to consult your attorney, who can help make sure that your final policies and procedures comply with all the legal requirements.

Non-Discrimination Policy & Notice

Every school district is required to adopt, publish, and implement a **policy** stating that the school does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates.

The district must also notify students, employees, parents, and others of this policy and publish it widely. The chart below contains the non-discrimination notice requirements in a nutshell.

Not all required publications must contain the full notice. If necessary, due to the size or format of the publication, you may instead publish a statement that the school district prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the Title IX Coordinator and provide a link to the notice on the district's website.

A sample long and short version of a [Nondiscrimination Notice](#) are included in this Guide.

Non-discrimination notice requirements

Who?

- Students
- Parents, guardians, etc.
- Employees
- Applicants for admission
- Applicants for employment
- All unions and professional organizations with agreements with the district

What?

- Statement of nondiscrimination and prohibition of sex discrimination in education programs or activities
- Inquiries may be referred to Title IX coordinator, to OCR, or both
- Name and contact info for Title IX coordinator
- How to locate nondiscrimination policy
- How to report
- How to make a complaint
- How to locate grievance procedures

Where?

- Website
- Each handbook, catalog, announcement, bulletin, and application form to:
 - > Persons entitled to notice
 - > Used in connection with recruitment of students or employees
- Substance of notice can be limited, if necessary, because of format or size of publication

Key Policies & Procedures

The District’s Title IX policy and grievance procedures will need to be reviewed and revised to comply with the new rules. Additionally, the following key policies and procedures should be reviewed for potential updates.

Student Policies and Procedures	Employee Policies & Procedures	Pregnant & Parenting Policies
<ul style="list-style-type: none"> <input type="checkbox"/> Anti-discrimination & harassment policies <input type="checkbox"/> Threat assessment policies & procedures <input type="checkbox"/> Bullying & Cyberbullying policy <input type="checkbox"/> Suspension, alternative placement, & expulsion policies <input type="checkbox"/> Other student grievance and & appeal procedures <input type="checkbox"/> Student Handbooks <input type="checkbox"/> Student Code of Conduct <input type="checkbox"/> Dress code <input type="checkbox"/> Leave policies <input type="checkbox"/> FERPA/student records 	<ul style="list-style-type: none"> <input type="checkbox"/> Anti-discrimination & harassment policies <input type="checkbox"/> Employee grievance and & appeal procedures <input type="checkbox"/> Administrative leave & termination policies <input type="checkbox"/> Employee handbook(s) <input type="checkbox"/> Employee records 	<ul style="list-style-type: none"> <input type="checkbox"/> Accommodations policies for students and employees <input type="checkbox"/> Attendance policies for students <input type="checkbox"/> Compensation & leave policies for employees <input type="checkbox"/> Policies implementing and related to the PUMP Act <input type="checkbox"/> Policies implementing and related to Pregnant Workers Protection Act

Develop Forms and Templates

Even though the grievance process is streamlined from what was required by the 2020 rules, the new rules still include technical requirements with respect to notifications and documentation. So while every complaint is different, a standard set of forms and notices will help your Title IX team respond promptly, equitably, and compliantly. You can purchase standard templates or create your own, here are some that will likely come in handy:

- Documentation of oral reports
- Notice of supportive measures
- Notice of emergency removal
- Informal resolution notice
- Notice of dismissal
- Notice of allegations to parties
- Investigation plan template
- Waiver forms for impermissible evidence
- Appeal form
- Notice of rights related to pregnancy
- Log of oral and written reports
- Form to challenge supportive measures
- Form to challenge emergency removal
- Informal resolution agreement template
- Notice of extension of timeframes
- Notice of interview
- Notice of right to review and respond to relevant evidence
- Determination template
- Appeal decision template

The AASA and T&H [2024 Title IX Guidebook for K-12 Schools](#) will include all of these forms and more, as well as explanations of when and how to use the forms.



Title IX Glossary: Key Terms & Acronyms

Complainant – a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination or another person who is alleged to have been subjected to such conduct and who was participating or attempting to participate in the education program or activity at the time of the alleged sex discrimination.

Complaint – an oral or written request to the school that can be objectively understood as a request for the school to investigate and make a determination about alleged discrimination under Title IX.

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 determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Different Treatment Discrimination – when an individual or group of individuals is treated differently because of their sex.

Disparate Impact Discrimination – when a facially neutral policy, rule, or practice has a disproportionate impact on students of a particular sex and the school does not have a substantial legitimate justification for the use of that criterion.

Domestic Violence – felony or misdemeanor crimes committed by a person who:

1. Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of your state or a person similarly situated to a spouse of the victim;
2. Is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
3. Shares a child in common with the victim; or
4. Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of your state.

Hostile Environment Harassment – 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 the student’s ability to participate in or benefit from the school’s educational program or activities.

OCR – the U.S. Department of Education’s Office for Civil Rights, which enforces compliance with federal civil rights laws, including Title IX, in K-12 schools and higher education institutions.

Pregnancy and Related Conditions – pregnancy, childbirth, termination of pregnancy, or lactation; medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions.

Quid Quo Pro Harassment – an employee, agent, or other person authorized by the school district to provide an aid, benefit, or service under the school’s education program or activity explicitly or impliedly conditioning the provision of that aid, benefit, or service on a person’s participation in unwelcome sexual conduct.

Respondent – a person who is alleged to have violated the school’s prohibition on sex discrimination.

Retaliation – intimidation, threats, coercion, or discrimination against any person by the school, a student, or an employee for the purpose of interfering with any right or privilege secured by Title IX or because the person reported information, made a complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, informal resolution process, or hearing.

Sex-Based Harassment – unwelcome conduct based on sex, including quid pro quo harassment, hostile environment harassment, sexual assault, dating violence, domestic violence, and stalking.

Failure to Accommodate – failure to provide a reasonable accommodation, such as breaks during class or changes in schedule, to a student who is pregnant or has a pregnancy-related condition.

Sexual Assault – an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. The definition includes rape, sodomy, fondling, statutory rape, and incest.

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.



Sample Notice of Nondiscrimination

Long Version

[SCHOOL] does not discriminate on the basis of race, color, religion, sex, national origin, age, disability, or any other basis prohibited by law and prohibits discrimination, including harassment, in any education program or activity that it operates. Retaliation against anyone who, in good faith, makes a report of harassment or discrimination, files a complaint of harassment or discrimination, serves as a witness, or participates in an investigation or grievance process is also a violation of [SCHOOL'S] nondiscrimination policy and is prohibited.

[SCHOOL] has designated the following individual(s) to coordinate efforts to comply with and carry out its nondiscrimination responsibilities, and questions regarding the [SCHOOL'S] nondiscrimination commitments, as well as related laws, regulations, and District policies, may be referred to the designated employee(s):

[SCHOOL'S] Title IX Coordinator is:

[name or title, office address, email address, and telephone number].

[SCHOOL'S OTHER DESIGNEES UNDER SECTION 504, THE ADA, ETC.]

[SCHOOL] is required not to discriminate on the basis of sex by Title IX and its implementing regulations. Inquiries about Title IX may be referred to [SCHOOL'S] Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights, or both.

To report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please refer to [include link to location(s) on website or otherwise describe location(s) where individuals can report sex discrimination]. Any person may also report sex discrimination, including harassment, using the contact information listed for the Title IX Coordinator.

[SCHOOL'S] nondiscrimination policy and grievance procedures can be located at [include link to location(s) on website or otherwise describe location(s)]. **[NB: Make sure both your policies and your written procedures may be accessed from the link(s) provided.]**

Short Version

[SCHOOL] prohibits sex discrimination in any education program or activity that it operates. Individuals may report concerns or questions to the Title IX Coordinator. The notice of nondiscrimination is located at [insert website address].