

2020 Title IX: Essential Mandates, Definitions, and Due Process for Institutions

The "Full Text 2020 Title IX Regulations.pdf" outlines numerous mandatory requirements for recipients of Federal financial assistance, such as elementary and secondary schools and postsecondary institutions, concerning their response to allegations of sexual harassment.

Throughout these regulations, "recipient" or "schools" collectively refers to these institutions that receive Federal financial assistance.

Key Definitions

Understanding the following terms, as defined within the 2020 Title IX Regulations (34 CFR § 106.30), is crucial for comprehending an institution's obligations:

- **Actual Knowledge:** Notice of sexual harassment or allegations of sexual harassment to the recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.
- **Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- **Decision-maker:** An official who makes the determination regarding responsibility at the conclusion of the grievance process.
- **Education Program or Activity:** Includes 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 includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.
- **Formal Complaint:** A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.
- **Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- **Sexual Harassment:** Under the 2020 Title IX Regulations, "sexual harassment" is defined specifically as conduct based on sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (also known as "quid pro quo" harassment); or
- (2) 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 recipient's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).
- **Note on "Sexual Misconduct":** The term "sexual misconduct" is **not defined or used as a separate regulated term** within the 2020 federal Title IX Regulations. While institutions may use "sexual misconduct" as a broader term in their own internal policies to encompass a wider range of behaviors, the federal regulations specifically govern "sexual harassment" according to the precise definition provided above.
- **Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint, or where no formal complaint has been filed.
- **Title IX Coordinator:** The employee designated by the recipient to carry out its responsibilities under Title IX.

Mandatory Issues and Requirements for Recipients

Prompt Response and Supportive Measures

- Recipients **must** respond promptly to individuals alleged to be victims of sexual harassment by offering supportive measures.
- The Title IX Coordinator **must** promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes, and explain the option of filing a formal complaint.
- A response to a report or formal complaint of sexual harassment **must** include offering supportive measures.

Grievance Process and Due Process

- Recipients **must** follow a fair grievance process to resolve sexual harassment allegations when a complainant requests an investigation, or a Title IX Coordinator decides an investigation is necessary.
- Recipients **must** incorporate procedural due process protections into their grievance process to ensure fair and reliable factual determinations when investigating and adjudicating a formal complaint of sexual harassment.
- The grievance process **must** apply equally to both parties for any provisions, rules, or practices beyond those explicitly required by § 106.45 for handling formal complaints of sexual harassment.
- Recipients **must not** treat a respondent as responsible for sexual harassment without providing due process protections.

Notice and Information Disclosure

- Upon receipt of a formal complaint, recipients **must** provide written notice to the complainant and the respondent. This notice **must** inform the parties of the recipient's grievance process and provide sufficient details of the sexual harassment allegations being investigated.
- Recipients **must** provide written notice of all investigative interviews, meetings, or hearings with sufficient time for the parties to prepare to participate.
- Recipients **must** allow each party to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence upon which the recipient does not intend to rely.

Personnel and Training

- Recipients **must** designate a Title IX Coordinator.
- All Title IX personnel, including Title IX Coordinators, investigators, and decision-makers, **must** be properly trained.

Fair Investigation and Adjudication

- The grievance process **must** provide for objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence.

- The grievance process **must** include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made.
- Parties **must** have an equal opportunity to present witnesses and other inculpatory and exculpatory evidence.
- Recipients **must not** restrict the ability of either party to discuss the allegations or gather and present relevant evidence.
- The grievance process **must not** require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege.
- Recipients **must** create an investigative report that fairly summarizes relevant evidence.
- The single investigator model is **prohibited**, meaning the same person **cannot** serve as both the investigator and the decision-maker.

Roles and Overlap

The Title IX regulations clearly define distinct roles within the grievance process to ensure fairness and impartiality:

- **Title IX Coordinator:**
 - **Role:** The Title IX Coordinator is responsible for overseeing the institution's overall response to sexual harassment, including receiving reports, coordinating supportive measures, and ensuring compliance with the regulations. They are the central point of contact for Title IX matters.
 - **Overlap with Investigator:** The regulations **do not explicitly prohibit** the Title IX Coordinator from serving as an investigator. However, it is generally considered a best practice to have separate individuals fulfill these roles to avoid perceived conflicts of interest and allow for specialization.
 - **Overlap with Decision-Maker/Hearing Officer:** While not explicitly prohibited for the Title IX Coordinator, if the Title IX Coordinator *does* serve as the investigator, they **cannot also be the decision-maker or hearing officer**. This is due to the mandatory non-overlap rule between the investigator and the decision-maker. Even if not acting as an investigator, having the Title IX Coordinator also serve as the decision-maker could be seen as potentially compromising the impartiality of the adjudicative process, given their overarching administrative and oversight

responsibilities. Best practices often suggest keeping these roles separate to enhance fairness.

- **Investigator:**

- **Role:** The investigator is responsible for gathering all relevant evidence related to a formal complaint of sexual harassment. They conduct interviews, collect documents, and compile an investigative report.
- **Must Not Overlap:** The **investigator must not serve as the decision-maker or hearing officer**. This is a mandatory separation of roles to ensure that the person collecting the evidence is not the same person who makes the final determination of responsibility. This prevents bias and promotes objective evaluation of evidence.

- **Decision-Maker / Hearing Officer:**

- **Role:** The decision-maker (often referred to as a hearing officer in postsecondary institutions where live hearings are required) is responsible for objectively evaluating all relevant evidence presented and deciding regarding responsibility for the alleged sexual harassment. In postsecondary institutions, they preside over a live hearing and facilitate cross-examination.
- **Must Not Overlap:** The **decision-maker/hearing officer must not serve as the investigator**.

- **Advisors:**

- **Role:** Advisors are individuals who support and assist the complainant and respondent throughout the grievance process. They can be chosen by the parties themselves, including an attorney. If a party does not have an advisor at a live hearing, the institution **must** provide one to conduct cross-examination.
- **Overlap:** Advisors are distinct from the institution's personnel who are involved in the investigation or adjudication. The Title IX Coordinator, investigators, or decision-makers would not serve as advisors to the parties.

In summary, the critical non-overlapping roles are: Investigator and Decision-Maker/Hearing Officer. The same individual **cannot** perform both of these functions. While the Title IX Coordinator can fulfill the investigator's role, if they do so, they are then barred from also being the decision-maker. The regulations emphasize a separation of the investigative and adjudicative functions to ensure due process and a fair resolution for all parties involved.

Determination and Hearings

- Recipients **must** issue a written determination regarding responsibility that includes specific details, such as findings of fact, conclusions about whether sexual harassment occurred, and the rationale for the outcome.
- **Postsecondary institutions must provide a live hearing.**
- At a live hearing, decision-makers **must** permit each party's advisor to conduct cross-examination.
- If a party does not have an advisor present at a live hearing, the recipient **must** provide one to conduct cross-examination on behalf of that party.
- Elementary and secondary schools **may** require a hearing and **must** provide an opportunity for parties to submit written questions to each other.
- The decision-maker **must not** rely on statements of a party or witness who does not submit to cross-examination (in postsecondary institutions with live hearings) or written questions (in elementary and secondary schools).
- **Impact of Party Non-Participation in Hearings:** If a complainant or respondent (or both) chooses not to participate in a live hearing, the decision-maker cannot rely on any of their prior statements from the investigation report in making a determination of responsibility, as those statements would not have been subject to cross-examination. This significantly limits the admissible evidence and often leads to a finding that the institution could not meet its burden of proof, resulting in a "not responsible" determination.

Remedies and Sanctions

- When a recipient determines a respondent to be responsible for sexual harassment after following a fair grievance process, the recipient **must** provide remedies to the complainant.
- Recipients **must** describe the range of possible disciplinary sanctions and remedies.
- Recipients **must** describe the range of available supportive measures.

Policy and Procedures Dissemination

- Recipients **must** disseminate their non-discrimination policy and the Title IX Coordinator's contact information.

- Recipients **must** notify students, employees, and others of their grievance procedures and grievance process for handling reports and complaints of sex discrimination, including sexual harassment.
- Recipients **must** describe the standard of evidence to be used (e.g., preponderance of the evidence or clear and convincing evidence).
- Recipients **must** describe the procedures and bases for appeal.

Prohibited Actions and Considerations

- Retaliation against individuals for exercising rights under Title IX is expressly **prohibited**.
- Recipients are **not required** to deprive an individual of rights guaranteed under the U.S. Constitution when responding to sex discrimination claims under Title IX.
- Recipients **must** obtain voluntary, written consent from both parties to pursue informal resolution.
- Recipients **must not** use informal resolution to resolve allegations that an employee sexually harassed a student.

Recordkeeping and Compliance

- Recipients **must** maintain certain records for a period of seven years, including records of all sexual harassment investigations and resolutions, supportive measures, and training materials.
- Recipients are **required** to comply with applicable disability laws, including with respect to accessibility of written materials, and **must** provide evidence in a format that complies with any applicable disability laws.
- The Department's Office for Civil Rights ("OCR") **may** require recipients to take remedial action for sex discrimination or other Title IX regulation violations.

Timeframes for Grievance Process Stages

The 2020 Title IX Regulations **do not mandate specific, rigid deadlines** for each stage of the grievance process (e.g., investigation completion or hearing dates). Instead, the regulations require that the grievance process "**operate within a reasonably prompt timeframe.**" This approach allows institutions flexibility to manage the complexity of each case, which can vary significantly in scope and needs. While institutions are expected to move cases forward efficiently, the regulations deliberately avoid setting hard deadlines to accommodate the unique circumstances that may arise. Each institution is responsible for

establishing its own reasonably prompt timeframe within its published grievance procedures.

Jurisdiction Over Non-Employees, Non-Students, and Other Third Parties

The institution's commitment to providing an environment free from sex discrimination extends to its employees, students, and other participants in its education programs and activities. While Title IX primarily governs the conduct of the institution's own students and employees, the institution also has an obligation to address complaints of sexual harassment made by a current employee, staff, or faculty member against individuals who are not directly affiliated with the institution (e.g., visitors, contractors, alumni, or other third parties).

In such cases, the institution's response under Title IX will activate when the alleged sexual harassment occurred in an education program or activity over which the institution exercised **substantial control** over both the respondent (the individual against whom the complaint is made) and the context in which the sexual harassment occurred.

When such a complaint is received, the institution will:

- Promptly offer supportive measures to the complainant, as appropriate.
- Implement an **administrative fact-finding or inquiry** to ascertain the facts and circumstances of the complaint within the bounds of its authority and control.
- **Not assert personal jurisdiction for purposes of discipline** over individuals who are not employees, staff, or students.
- Take appropriate action to address the alleged harassment within its power and control to ensure a safe and non-discriminatory environment for its employees, staff, and faculty. This may include, but is not limited to, imposing behavioral restrictions on the third party's access to campus or participation in institutional programs, altering employment or academic arrangements, or pursuing other available remedies consistent with its authority and applicable law.

Ongoing Institutional Responsibilities

It is critical to emphasize that an institution's responsibilities under Title IX do not cease once a particular stage of the grievance process (such as when interim measures are implemented or the investigation or hearing) is completed. Regardless of the outcome of a formal complaint, the recipient's obligation to ensure an environment free from sex discrimination, including sexual harassment, is continuous. This includes:

- **Providing and monitoring supportive measures** for both complainants and respondents as appropriate.
- **Implementing and enforcing any remedies or sanctions** resulting from a determination of responsibility.
- **Preventing recurrence** of sexual harassment.
- **Addressing any continuing effects** of the harassment on the educational environment.
- **Prohibiting and addressing retaliation** related to the complaint process.

The completion of a specific stage marks a transition within the overall process, not an end to the institution's fundamental obligation to maintain a safe and equitable educational environment for all its members.

The complexities of situations involving sex discrimination, including sexual harassment, mean that **numerous scenarios and questions may arise**. For specific guidance, to report a concern, or to understand your options, please **always contact GCCCD's Title IX Coordinator Michael Salvador directly**. He is your primary resource for all Title IX-related inquiries and support.

Commonly Asked Questions and General Guidance

While this document provides a comprehensive overview of the Title IX Regulations, the complexities of situations involving sex discrimination, including sexual harassment, mean that **numerous scenarios and specific questions may arise**. For individualized guidance, to report a concern, or to understand your specific options, please **contact the Title IX Coordinator directly**.

1. **"What exactly are some common examples of 'Supportive Measures' that could be offered?"**
 - a. Supportive measures are flexible and individualized services. Common examples include no-contact orders between parties, changes to academic or work schedules, adjustments to housing arrangements, referrals for counseling or medical services, and extensions of deadlines. Your Title IX Coordinator can discuss the full range of options available and tailored to your specific needs.

2. "If I report something, do I have to proceed with a formal investigation, or can I remain anonymous or choose other options?"

- a. Reporting a concern does not automatically initiate a formal investigation. You have options, which can include receiving supportive measures without a formal complaint, pursuing informal resolution with consent (where appropriate), or choosing not to proceed at a given time. While full anonymity might limit an institution's ability to respond comprehensively, your privacy will be respected to the greatest extent possible. The Title IX Coordinator will explain all available options, including how your privacy will be handled and the implications of each choice.

3. "How will my privacy be protected throughout the process, and who will know about my report or the investigation?"

- a. GCCCD is committed to protecting the privacy of all parties involved to the extent permitted by law and policy. Information is typically shared only with those who have a legitimate need to know to assist in the response, investigation, or resolution process. Records are kept confidential. Your Title IX Coordinator can provide details on the institution's specific privacy protocols and how information will be handled.

4. "What kind of disciplinary actions or consequences could a respondent face if found responsible?"

- a. If a respondent is found responsible for sexual harassment, the disciplinary actions vary depending on the severity of the conduct, prior history, and institutional policy. Consequences can range from educational interventions and formal warnings to suspension, expulsion, or termination of employment. The institution's grievance procedures outline the range of possible disciplinary sanctions, and the Title IX Coordinator can explain these in detail.

5. "What does a 'live hearing' actually look and feel like in practice?"

- a. For postsecondary institutions, a live hearing is a formal meeting presided over by a decision-maker, where parties (through their advisors) can ask relevant questions of other parties and witnesses. The process is designed to be fair and orderly, focusing on information gathering for a determination of responsibility. Your Title IX Coordinator can walk you through the specifics of how these processes are conducted at your institution and what to expect.

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