



A S C E N D

LEADERSHIP ACADEMY
Board of Directors

- Introduction to Title IX
- Training Requirements
- New Regulations/Key Definitions
- Your Title IX Team
- The Board's Role
- Handling Title IX Complaints
- Conclusion



Introduction to Title IX

Title IX personnel (including faculty and staff and all mandatory reporters) must go through training on:

- new definitions (e.g., of sexual harassment)
- the scope of the school's education program or activity
- conducting an investigation and the grievance process (including hearings, appeals, and informal resolution processes, as applicable)
- serving impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- issues of relevance



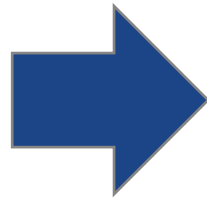
Overtone of New Regulations

- Focus on due process, including:
 - Equitable treatment of accuser and accused.
 - Eliminating immediate disciplinary actions taken against accused.
 - Slowing down of handling of Title IX cases (e.g. time given to parties to review the case file, time given to review and ask questions regarding the investigative report, etc.).
 - K-12 cases have tended to be handled faster than college/university cases due to school administrations' ability to more efficiently summon students.
 - New notice requirements, for example, prevent front offices from simply calling a respondent down to talk about allegations, as they may have done before.

Scope of Responsibility

“Actual knowledge” of “sexual harassment”
(as newly defined) **that occurred within the school’s “education program or activity”**

- includes locations, events, or circumstances over which the recipient exercised substantial control over the respondent and the context in which the sexual harassment occurred
- **Note that this is a broad definition.** E.g. did conduct occur in location/context where school:
 - Owned premises
 - Exercised oversight, supervision or discipline
 - Funded, sponsored, promoted or endorsed event
- **against a “person in the United States.”**



NOTE: a school may address sexual harassment affecting its students or employees that falls **outside** Title IX’s jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline

- This includes issues occurring outside narrow sexual harassment definition, education programs or activities, as well as issues occurring outside of the US.

Actual Knowledge

- Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a School's Title IX Coordinator, or any official of the School who has authority to institute corrective measures on behalf of the recipient.
- For K-12 Schools, this means that ALL teachers and staff are required to report allegations of misconduct that they have witnessed or heard about to the Title IX Coordinator.



Deliberate Indifference

This "deliberate indifference" standard governs schools' responses to Title IX sexual harassment.

Once you have knowledge, your response must not be **deliberately indifferent.**

Deliberately indifferent means in a way that is clearly unreasonable in light of the known circumstances.

- To avoid being deemed "deliberately indifferent," schools' mandatory responses must:
 - Provide supportive measures (discussed in the following slide).
 - Include prompt contact by Title IX coordinator to complainant.
 - Follow a grievance process before imposing discipline or sanctions.
 - Not restrict constitutional rights.
 - Observe meticulous record keeping requirements in order to protect against accusations of deliberate indifference.

Key Definitions

- **COMPLAINANT**: an individual who has reported being the victim of conduct that could constitute sexual harassment, or on whose behalf the Title IX Coordinator has filed a formal complaint. *Note: parents may file complaints for their children.*
- **RESPONDENT**: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- **RECIPIENT**: the institution charged with receiving and handling complaints, i.e., the school.
- **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 school investigate the allegation of sexual harassment.

New Sexual Harassment Definition

“Sexual Harassment” means conduct on the basis of sex that falls under one or more of the following:

- 1) **Quid pro quo harassment.** An employee conditioning an educational aid, benefit, or service on an individual’s participation in unwelcome sexual conduct.
- 2) Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity (i.e., hostile environment). Note: THIS IS NARROW
- 3) Sexual assault as defined in the Clery Act, or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act.

Responsibility If Conduct Not Covered by Title IX

The narrower definition of sexual harassment means that many K-12 cases may not fall under the new Title IX definition.

- Schools will need to act within their own codes of conduct or other policies to respond to cases and ensure they do not worsen to the levels described in the definition.
- A school may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.

Your Title IX Team

New regulations expressly prohibit the Single Investigator Model, where the investigator is also the decision-maker determining responsibility in Title IX cases.

Rationale: one person cannot effectively serve as detective, prosecutor, judge, and jury.



TITLE IX TEAM	SCHOOL ROLE	PERSON	EMAIL/PHONE
Coordinator	Counselor/Social Worker	Sara Lipsey, Counselor	slipsey@alashoolsnc.org / (919) 842-5411
Investigator	Assistant Principal or Principal or Director	Jeff Whitt, MS Principal* Janice Jett, HS Principal**	jwhitt@alashoolsnc.org / (919) 842-5411 jjett@alashoolsnc.org / (919) 842-5411
Decision Maker	Principal or Director or Board of Directors	Justin Smith, Managing Director	jsmith@alashoolsnc.org / (919) 842-5411
Appeals Panel	Board of Directors or School Based Team	Steven Gatlin, Board Member	4gatlin@gmail.com

Title IX Coordinator

The employee designated by the school to coordinate its efforts to comply with Title IX responsibilities must be referred to as the **“Title IX Coordinator”**

The Title IX Coordinator is responsible for monitoring the overall implementation of policies and compliance with Title IX in all areas covered by the regulations.

The major responsibility is the prevention of sexual harassment and discrimination.



- Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.
- Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.

Investigator

- In Title IX cases, the investigator is primarily tasked with facilitating interviews of the complainant, witness(es), and respondent, documenting and making the concerned parties aware of the status of investigation proceedings, and issuing an investigative report summarizing evidence before a determination regarding responsibility is made.
- The investigator will work closely with the Title IX coordinator to execute all duties outlined above in accordance with the Title IX grievance process.



Decision-maker

- In Title IX cases, the decision-maker is primarily tasked with issuing a determination regarding responsibility after reviewing the evidence and findings of the investigation.



Appeals Board (this is you)

- New regulations dictate that schools must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases:
 - procedural irregularity that affected the outcome of the matter;
 - newly discovered evidence that could affect the outcome of the matter; and
 - Title IX personnel had a conflict of interest or bias that affected the outcome of the matter.
 - NOTE: schools may also offer an appeal equally to both parties on additional bases
- The job of the appeals board is to review the case and determination and issue a ruling at the conclusion of their review.



Handling Title IX Complaints



Appeals Process

- The new regulations dictate that schools must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases:
 - procedural irregularity that affected the outcome of the matter.
 - newly discovered evidence that could affect the outcome of the matter.
 - Title IX personnel had a conflict of interest or bias that affected the outcome of the matter.
- NOTE: schools may also offer an appeal equally to both parties on additional bases.

Record Keeping

Title IX regulations require the school to keep the following records for 7 years:

- Sexual harassment investigation documents, including any determination regarding responsibility, any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, any remedies provided to the complainant
- Appeals and results therefrom
- Informal resolution and results therefrom
- All materials used to train coordinators, investigators, decision-makers, and persons who facilitate an informal resolution process (such materials must also be made available on school website)

The school should meticulously keep records in case it must ever document how its behavior was not “deliberately indifferent” in a Title IX proceeding.

Retaliation Prohibited

- Expressly prohibits retaliation against any individual for exercising Title IX rights:
 - Protections for individuals making a complaint, testifying, or otherwise assisting.
 - Prohibiting charges against an individual for another code of conduct violation not involving sex discrimination or sexual harassment arising out of same circumstances.
 - Requirements for confidentiality of all individuals involved.
- Notable exceptions:
 - exercise of First Amendment Rights.
 - making a materially false statement during a proceeding.
- Any person retaliated against can file a complaint with the school, and the school must address the complaint promptly and equitably, as with Title IX complaints.
- NOTE: Schools should make every effort to keep the identifies of parties and witnesses confidential to avoid retaliation complaints.

Conclusion

- New regulations effective August 14, 2020.
- Recognize and begin preparing any needed policy and process revisions.
- Recognize and begin preparing for needed training.
- Recognize and be prepared for issues and complaints that may still come up despite COVID-19 and social distancing (e.g. cyberstalking, online harassment, inappropriate texting, etc.)