



R³ Resources: New to IX? – What Every K-12 Administrator Needs to Know

This checklist offers quick tips and our summary
of the New 2020 Title IX Regulations



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What Every K-12 Administrator Needs to Know

So, you're new to Title IX? Welcome. Here's a primer to get you started.

First, Title IX isn't the actual name of the law. That's just a shorthand for where it was located in the United States Code originally. It's now located at 20 USC § 1681, so really, we should be calling it Title XX.

Second, for those of you unaccustomed to roman numerals (we never understood the point, really), it's not "Title Ix," it's pronounced "Title Nine." Want to really impress your friends, call it the Patsy Mink Act, its actual name.

Third, what is it all about? It's a law that prohibits sex discrimination in federally-funded education programs. Most schools in the US are subject to Title IX. We refer to federally funded education programs as "recipients."

Fourth, what's sex discrimination? It means you are excluded from or effectively denied access to an education program because of your sex. That exclusion could take the form of outright denial because you are a man or woman (more on non-binary-protections later). That's called differential treatment discrimination. You could also be denied or excluded as the result of sexual harassment, sexualized bullying, sexual violence, intimate partner violence, stalking, hazing, or any number of other abusive behaviors that are sexual in nature or directed at you because of your sex. You'll also find that Title IX will protect you if you're discriminated against because of pregnancy, adoption, abortion, parenting, or childbirth, all of which are related to sex.

Fifth, what should you do? If you're being discriminated against in an education program, we hope you will report it. Tell a school official. Every school is required to designate a Title IX Coordinator whose job it is to help you report your concerns and make sure the school addresses them by providing what's called a remedy. The simple requirement is to ensure that the discrimination ends, that the school acts to reasonably prevent it from recurring, and that the school restores your access to your education program.

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Sixth, Title IX also governs athletics equity. You have a right to participation in sports and to equitable funding within equitable programs, without exclusion on the basis of sex. Separate but equal team participation is generally permitted under Title IX in sports, but not in other educational programs. Title IX is best known for its role in creating athletics access irrespective of sex, but the government just published extensive new rules on Title IX, called regulations, that are not about sports at all. More on that below.

Seventh, Title IX explicitly allows:

- Separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact;
- Grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex;
- Separate sessions for boys and girls in classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality;
- Chorus may be based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex;
- Voluntary enrollment in single-sex classes and extracurricular activities based on the recipient's important objective to improve educational achievement of students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective or meets particular, identified educational needs of students, as long as a substantially equal coeducational class or extracurricular activity is offered in the same subject or activity.

Eighth, if your school or your school's Title IX Coordinator won't enforce your rights to educational access without sex discrimination, you have recourse. You can file complaints with various government enforcement agencies, often called Offices for Civil Rights (OCR). Most cabinet level departments have OCRs (e.g., HUD, Education, HHS, Energy, NASA, EEOC, DOJ. Even NOAA, the weather people, have one). You'll probably need to go to the Department of Education's (ED) OCR, but it depends on who you are and what kind of federally funded program within which you've experienced discrimination. Title IX protects students, staff, teachers, and administrators.

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Ninth, if that doesn't work, consider a lawsuit. While Title IX litigation can be expensive, long, and stressful, sometimes it's important to prove your rights have been violated. To have your day in court, consult a lawyer who specializes in Title IX litigation. There have been thousands (literally) of Title IX lawsuits in the US courts, even the Supreme Court.

Tenth, let's talk about these regulations. Title IX goes back to 1972, so there is a long history here (imagine Richard Nixon later wondering, "I signed what?"). The government writes statutes that are often vague. Title IX itself is only 37 words long. So federal departments like ED write extensive regulations explaining to schools how to comply. The original regulations on Title IX were published in 1975. Then ED's OCR issued guidance in 1997, and replaced it in 2001. Those guidelines have been enforced by OCR ever since. OCR has also issued a series of Dear Colleague Letters that are considered sub-regulatory guidance and don't have the force of law, meaning that OCR shouldn't enforce them as standards, but schools should make good faith efforts to adhere to them. Two such letters of significance were published in 2011 and 2014 by the Obama Administration, but were withdrawn in 2017 by the Trump Administration. Now, we have 2020 regulations just issued by OCR, the first significant new rules in 45 years.

So, let's talk about these new regulations (regs). They will have the force of law. This means that any OCR can enforce them through lawsuits or restricting federal funds for non-compliant schools. It also means that courts are required to be deferential to them. Courts may have their own rules for enforcing Title IX, but they are expected to look to the regulations when questions of interpretation arise.

They're very prescriptive. OCR hasn't been thrilled with the fact that many K-12 schools have ignored their Title IX compliance obligations historically. OCR also isn't thrilled with the way many schools and colleges have used Title IX over the last ten years as an excuse to be biased toward victims/survivors and ignore the due process rights of those who are accused. So due process is a big theme of the new regs. Huge. And, a level playing field is what should exist under Title IX, right? Men should not be advantaged over women, and women should not be advantaged over men. Of course, these regs are controversial. Some people think they don't protect the accused enough. Others think they go way overboard and protect the accused at the expense of victims/survivors.

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Want to know what we think about that? When was the last time government intervention to make something more complex made it any better? Just being real with you. The simple truth is that most schools don't have the staffing or financial resources to commit to meaningful compliance. But you must try to get as close as you can.

Do these regs frame everything a school administrator has to do to comply with Title IX? Not even close. They don't mention pregnancy or bullying. Or gender. Or athletics. These regs are narrowly focused on addressing sexual harassment and related acts of misconduct. In fact, it may be helpful to think of the regs as setting the floor as to the basic required response by schools when sexual harassment is reported to them. Under the regs, acts like sexual violence, stalking, intimate partner violence (IPV), bullying, hazing, etc., are just forms of sexual harassment either based on the definitions contained in the new regs or because the harassment creates a hostile environment on the basis of sex. So, we'll just refer to sexual harassment here, but you'll know we are talking about a broad spectrum of sexual misconduct. This base is what we call the industry standards. Again, the regs don't include all the industry standards applicable under Title IX, but they set industry standards for those areas that they address.

Is the base good enough? For some, it will be, but most schools strive to achieve what are called best practices, which are the ceiling. The regs set the floor of industry standards, but many schools are committed to going beyond compliance, by aiming for the ceiling of best practices. Where do we find those? Well, best practices are emerging and evolving all the time, but one of the best places to find them is through ATIXA. Our association is all about pushing beyond compliance to genuine commitment to programmatic excellence. Maybe you want to join an association like that?

One area we mentioned that the regs don't touch on is the rights of non-binary individuals. As protections related to sex can impact the rights of individuals along the spectrum of gender and sexual orientation, this is worth consideration. Federal policy has varied over time, and federal statutes do not protect individuals on the basis of sexual orientation or gender identity/expression at this time.

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A set of cases being decided by the Supreme Court right now, with decisions expected by October of 2020, will help to determine whether Title VII, the federal civil rights statute protecting employees, applies to gender and sexual orientation, as well as sex. If so, Title IX cases will likely follow this precedent. Until there are federal protections, gender identity/expression and sexual orientation are only protected by state or local law and institutional/organizational policy.

Returning to discussion of the regs, what are the themes we should be paying attention to in these regs? Well, in addition to pretty clearly defined due process requirements, with many hoops to jump through, the regs reflect a commitment to transparent resolution of discrimination allegations by schools. They lay out complex standards for investigating possible policy violations, to assure an investigation that is thorough, reliable, and impartial.

As K-12 misconduct becomes more abusive and increases in complexity, more is required of the administrators who will be investigating and responding. Frameworks for formal written notice, collection and sharing of evidence, rights to advisors, the assembly of a comprehensive investigation report, the obligation to issue a formal, written letter of outcome, and equitable appeal rights are all detailed.

OCR envisions small bureaucracies of well-trained Title IX officials in every school and district. Provisions address duties to report misconduct and the obligation to train all employees, not just the Title IX team. For many K-12 schools, it's become common to fold sexual harassment under anti-bullying policies and efforts, but that isn't going to fly with the new OCR framework. Sexualized bullying is a subset of sexual harassment, not the other way around. Title IX investigations are a very different animal than the simple, short conduct code investigations vice principals and building administrators do every day. 2,082 pages of new rules are a lot to master for any size administrative team. How are you going to do it with limited resources, time, and staff?

Well, since you found this document, you've probably also found our [Regs Rapid Response](#) resource center for compliance with the new regulations. Scroll down, and you'll see that our association (the leading industry association for Title IX administrators, with more than 3,500 members) has developed more than 25 resources for the education field, specific to these regs.



ATIXA 2020 New to Title IX?

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We've created a [K-12 compliance package](#) just for you. We have short overview materials, lengthy implementation guides, handy checklists, four different webinars, model policies, investigation handbooks, and trainings to certify you as a Title IX professional. Why re-invent the wheel? We've been deep into Title IX compliance for 22 years.

ATIXA has everything you need, including essential shortcuts, to get you up to speed quickly and affordably. As you can see from the list of resources available, you could just buy what you need, a la carte or by package. Feel free to do so, but we've structured the availability of resources to encourage you to join this lively and vibrant association. Most of our members consider ATIXA to be vital to their work. When you [join](#) as an individual or institutional member, you get many of the materials as part of your membership. Join our 150+ Super Members, and you get everything ATIXA has to offer. We've got it all in one place. The only thing we're missing now is you. [Please join us today.](#)

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