



Title IX Training

All School District Employees

July 2024

Big Picture Questions

What is the scope of conduct that constitutes sex discrimination?

What are my obligations to ensure that sex discrimination does not occur?

What do I do if I see conduct that may constitute sex discrimination?

To Whom do I report?

Orientation to District Process



Overview of Learning Materials



Introduction

**Obligation to
Address Sex
Discrimination**

**Scope of
Conduct**

**Applicable
Notification and
Information
Requirements**

**Insert Local
District Process
Here**

Conclusion



Introduction

Introduction

▶ Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.)

- ▶ Title IX prohibits discrimination on the basis of sex in education and employment.
- ▶ “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Introduction

Dept. of Education Regulations, 34 C.F.R. pt. 106

- ▶ “The purpose of this part is to effectuate Title IX, which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance...” [34 C.F.R. s. 106.1.](#)
- ▶ Other regulations found under 34 C.F.R. part 106.

Introduction

- ▶ **Enforced by the Department of Education, Office for Civil Rights**
- ▶ **Other federal laws address employee or student discrimination**
 - ▶ For example, Title VII of the Civil Rights Act and Title VI of the Civil Rights Act.
- ▶ **Other state laws address discrimination**
 - ▶ For example, Wisconsin Statute [s. 111.31](#) and Wisconsin Statute [s. 118.13](#).
 - ▶ Enforced by the State Department of Public Instruction or State Department of Workforce Development.
- ▶ **Board policies may also address discrimination.**
- ▶ ***This training on sex discrimination is required by federal law.***

Introduction

▶ Training – All Employees

- ▶ An institution must ensure that persons receive training related to their duties under Title IX **promptly upon hiring or change of position that alters their duties under Title IX** or this part, and **annually** thereafter.
- ▶ The training must not rely on sex stereotypes.

34 C.F.R. s. 106.8(d).

Introduction

▶ Training – All Employees

- ▶ All employees must be trained on:
 - ▶ The institution's **obligation to address sex discrimination** in its education program or activity;
 - ▶ The **scope of conduct that constitutes sex discrimination** under Title IX and this part, including the definition of sex-based harassment; and
 - ▶ All applicable **notification and information** requirements under s. 106.40(b)(2) and 106.44.

34 C.F.R. s. 106.8(d).



Obligation to Address Sex Discrimination

Obligation to Respond

► General Response Requirement for Institutions

- An institution with **knowledge** of conduct that reasonably may constitute **sex discrimination** in its **education program or activity must respond promptly and effectively**; and
- An institution must also comply with Section 106.44 to **address sex discrimination** in its program or activity.

34 C.F.R. s. 106.44(a).

Obligation to Respond

▶ General Response Requirement for Institutions

- ▶ What is **knowledge** of conduct?
 - ▶ Requires all employees to take some action when they have **information** about conduct that **reasonably** may constitute sex discrimination, even if the employee has not received a complaint.
- ▶ What does it mean to respond **promptly and effectively**?
 - ▶ May include either **notifying** the Title IX Coordinator or **providing** the Title IX Coordinator's contact information and information about how to make a complaint of sex discrimination to any person who provides the employee with information.

Obligation to Respond

▶ General Response Requirement for Institutions

- ▶ What does it mean to **comply** with Section 106.44?
 - ▶ Employees must **notify** the Title IX Coordinator when the employee has **information** about conduct that **reasonably** may constitute **sex discrimination**.
 - ▶ Other obligations (discussed below) apply to any “confidential employees.”
 - ▶ When notified, the Title IX Coordinator must take certain actions to promptly and effectively **end** any sex discrimination in its education program or activity, **prevent** its recurrence, and **remedy** its effects.

34 C.F.R. s. 106.44(c)(1), (f)(1).

Obligation to Respond

▶ General Response Requirement for Institutions

- ▶ What conduct is in the education program or activity?
 - ▶ Except as provided in this subpart, this part applies to every recipient and to all sex discrimination occurring under a recipient's education program or activity **in the United States**.
 - ▶ "Program or activity" means "all of the operations" of a school district.

34 C.F.R. s. 106.2, 106.11.

Obligation to Respond

▶ General Response Requirement for Institutions

- ▶ What conduct is in the education program or activity?
 - ▶ For purposes of this section, conduct that occurs under a recipient's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution, and **conduct that is subject to the recipient's disciplinary authority.**

34 C.F.R. s. 106.11.

Obligation to Respond

▶ General Response Requirement for Institutions

- ▶ What conduct is in the education program or activity?
 - ▶ A recipient has an obligation to address a **sex-based hostile environment** under its education program or activity, even when **some** conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside of the United States.

34 C.F.R. s. 106.11.



Scope of the Conduct that Constitutes Sex Discrimination

Scope of the Conduct

Sex Discrimination: Education Programs or Activities

- ▶ “Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives federal financial assistance.”

34 C.F.R. s. 106.31.

Scope of the Conduct

► **Sex Discrimination: Parental, Family, or Marital Status; Pregnancy or Related Conditions**

- “A recipient must not adopt or implement any policy, practice, or procedure concerning a student’s current, potential, or past parental, family, or marital status that treats students differently on the basis of sex.”
- “A recipient must not discriminate in its education program or activity against any student based on the student’s current, potential, or past pregnancy or related conditions.”

34 C.F.R. s. 106.40.

Scope of the Conduct

► Sex Discrimination: Athletics

- “No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient”

34 C.F.R. s. 106.41.

Scope of the Conduct

► Sex Discrimination: Employment

- “No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which received federal financial assistance.”

[34 C.F.R. s. 106.51.](#)

Scope of the Conduct

► Sex Discrimination

- 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.

34 C.F.R. s. 106.10.

Scope of the Conduct

► Sex-Based Harassment

- “Sex-based harassment prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including the bases described in s. 106.10.”

34 C.F.R. s. 106.2.

Scope of the Conduct

▶ Quid Pro Quo Harassment

- ▶ “An **employee, agent, or other person** authorized by the recipient to provide an aid, benefit, or service under the recipient’s education program or activity **explicitly or impliedly** conditioning the provision of an aid, benefit, or service on a person’s participation in **unwelcome sexual conduct.**”

34 C.F.R. s. 106.2.

Scope of the Conduct

► 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** a person’s ability to participate in or benefit from the recipient’s education program or activity (i.e., creates a hostile environment).”

34 C.F.R. s. 106.2.

Scope of the Conduct

► Hostile Environment Harassment

- “Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
 - The degree to which the conduct affected the complainant’s ability to access the recipient’s education program or activity;
 - The type, frequency, and duration of the conduct;
 - The parties’ ages, roles within the recipient’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
 - The location of the conduct and the context in which the conduct occurred; and
 - Other sex-based harassment in the institution’s education program or activity.

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Scope of the Conduct

► Specific Offenses: Sexual Assault

- “An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.”

34 C.F.R. s. 106.2.

Scope of the Conduct

► **Specific Offenses: 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; and
 - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship.”

34 C.F.R. s. 106.2.

Scope of the Conduct

► **Specific Offenses: Domestic Violence**

- “Felony or misdemeanor crimes committed by a person who:
 - Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;
 - Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
 - Shares a child in common with the victim; or
 - Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.”

34 C.F.R. s. 106.2.

Scope of the Conduct

▶ **Specific Offenses: 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.”

34 C.F.R. s. 106.2.

Retaliation

Retaliation – In General

- A recipient must prohibit retaliation, including peer retaliation, in its education program or activity.
- When a recipient has **information about conduct** that reasonably may constitute retaliation under Title IX or this part, the recipient is obligated to comply with s 106.44.
- **Peer retaliation** means retaliation by a student against another student.


34 C.F.R. s. 106.2 and 106.71.

Retaliation

Retaliation – Definition

- Retaliation means **intimidation, threats, coercion, or discrimination** against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, **[1] for the purpose of interfering** with any right or privilege secured by Title IX or this part, or **[2] because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate** in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process under § 106.44(k), in grievance procedures under § 106.45, and if applicable § 106.46, and in any other actions taken by a recipient under § 106.44(f)(1).

34 C.F.R. s. 106.2.

A close-up, black and white photograph of a wooden gavel resting on a wooden block. The gavel is positioned diagonally, with its head in the foreground and its handle extending towards the upper left. The wood grain is clearly visible. A large, solid red triangle is overlaid on the right side of the image, partially obscuring the gavel and the background.

Applicable Notification and Information Requirements

Notification and Information

► Notification Requirements for All School Employees

- All school employees must “notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or this part [i.e., the Title IX regulations].”
- This requirement does not apply to “confidential employees.”

34 C.F.R. s. 106.44(c)(1).

Notification and Information

▶ Notification Requirements for All School Employees

- ▶ “Notify” is not defined under the regulations.
 - ▶ Such notification can likely occur verbally or in writing.
 - ▶ Best practice may be in writing, or, if verbally, it should be documented by the Title IX Coordinator.

Notification and Information

► Confidential Employee

- “An employee of a recipient whose communications are privileged or confidential under Federal or State law.
- The employee’s confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies.”

Notification and Information

► Confidential Employee

- “An employee of a recipient whom the recipient has designated as confidential under this part for the purpose of **providing services** to persons related to sex discrimination.
- If the employee also has a duty not associated with providing those services, the employee’s confidential status is only with respect to information received about sex discrimination in connection with providing those services.”

Notification and Information

► Confidential Employee Requirements

- “A recipient must require a confidential employee to **explain** to any person who informs the confidential employee of conduct that reasonably may constitute sex discrimination under Title IX or this part:
 - The **employee’s status as confidential** for purposes of this part, including the circumstances in which the employee is **not** required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination;
 - How to **contact the recipient’s Title IX Coordinator** and how to **make a complaint of sex discrimination**; and
 - That the Title IX Coordinator may be able to **offer and coordinate supportive measures**, as well as initiate an informal resolution process or an investigation under the grievance procedures.”

34 C.F.R. s. 106.44(d).

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Notification and Information

► Notification Requirements Concerning Pregnant Students

- When a student (or a person who has a legal right to act on behalf of the student) informs any employee of the student's pregnancy or related conditions, the employee must:
 - **Promptly provide that person with the Title IX Coordinator's contact information and**
 - **Inform that person** that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the institution's education program or activity.
- Such notification is not required if the employee reasonably believes that the Title IX Coordinator has been notified.

34 C.F.R. s. 106.40(b)(2).

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Notification and Information

▶ Prohibited Disclosure of *Personally Identifiable Information (PII)*

- ▶ An institution must not disclose personally identifiable information obtained in the course of complying with this part, except in the following circumstances:
 - ▶ When the recipient has obtained prior written consent from a person with the legal right to consent to the disclosure;
 - ▶ When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
 - ▶ To carry out the purposes of this part, including action taken to address conduct that reasonably may constitute sex discrimination under Title IX in the recipient's education program or activity;

Notification and Information

▶ Prohibited Disclosure of PII

- ▶ An institution must not disclose personally identifiable information obtained in the course of complying with this part, except in the following circumstances:
 - ▶ As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
 - ▶ To the extent such disclosures are not otherwise in conflict with Title IX or this part, when required by State or local law or when permitted under FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99.

The image features three books stacked on a dark, textured wooden surface. The top book has a bright teal cover, while the two books underneath have plain brown covers. A large, solid red triangle is positioned on the right side of the image, pointing towards the center. Overlaid on this red area and the books is the text 'District Specific Policy' in a large, white, sans-serif font.

District Specific Policy

District Specific Policy

- ▶ School districts must inform staff of the local school district's Title IX policy and specific Title IX grievance procedure.
- ▶ That notification will be inserted here by your local school district.

The background of the image is split diagonally from the top-left to the bottom-right. The upper-left portion is filled with a dense, overlapping field of three-dimensional, metallic-looking dollar signs (\$). These signs are rendered in various shades of gray and black, with highlights and shadows that give them a tangible, 3D appearance. The lower-right portion is a solid, vibrant red color. Overlaid on this red section is the text "Check for Understanding" in a large, bold, white sans-serif font. The text is positioned in the upper-middle part of the red area, with "Check for" on the first line and "Understanding" on the second line.

Check for Understanding

Check for Understanding

A staff member observes the following exchange as two boys pass two girls in the high school hallway:

- ▶ **Jason:** Here comes the hottest thing in this hallway. Looking good as always Lisa!
- ▶ **Lisa (smiling):** Shut up, Jason.
- ▶ **Jason (with a wink):** All right. But just so you know, I'm a great kisser. Text me if you ever want to schedule some practice.
- ▶ **Lisa:** Don't be such a creep. We'll probably catch you guys at the game tonight if you go. *[Lisa rolls her eyes and goes back to talking with her friend.]*

The staff member has never observed any similar conduct by Jason in the past.

Would this staff member be expected to make a report of sex-based harassment based on Jason's comments?

Check for Understanding

A female high school student is absent from school for several days. She then meets with one of her teachers and asks about make up work for the days absent.

- ▶ During the meeting, the female student tells the teacher that she may be absent for a few days the following week as well.
- ▶ She tells the teacher that she needs to have a follow up appointment with a doctor to determine next steps because she just found out that is expecting a baby.

Based on the information above, what steps must the teacher based on this information?



Conclusion

Conclusion

- ▶ Respond when you have knowledge of sex discrimination, not just sex-based harassment.
- ▶ Understand the scope of conduct that may fall within sex discrimination.
- ▶ Notify the Title IX Coordinator of any information related to sex discrimination.
- ▶ Maintain confidentiality of information under Title IX, as appropriate.

Presenter Bio

Rick Verstegen is an attorney with Boardman & Clark LLP in Madison, Wisconsin. Rick is a member of the School Law Practice Group and the Labor and Employment Group at the firm. Rick regularly advises school officials and represents school districts on issues involving school law. Rick is also past President for the Board of Directors for the Wisconsin School Attorneys Association.

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Presenter Bio

Bob Butler has been a WASB staff counsel since 1990. He is also, along with attorney Barry Forbes, the Association's co-associate executive director. Bob directly represents more than 40 school districts in Wisconsin on employment, human resources and school law matters. Bob also provides membership services, including general legal information, to all school districts that are members of WASB.

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