



COLORADO LEAGUE *of*
CHARTER SCHOOLS



Title IX Coordinator Training
Session 1
August 26, 2021



Employment Matters

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- 20+ years of employment law and human resources experience
- 7+ years managing Title IX compliance and investigations for K-12 and higher educational institutions
- Former Title IX Coordinator for a prominent Colorado research university, a private university, and K-12 charter schools
- Certified Title IX Administrator (NACUA)
- Forensic Experiential Trauma Interview (FETI) certified



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Matters

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Title IX Coordinator Training Details

We will provide everything K-12 Charter School Title IX Coordinators need to know, including:

- Policy development

- Program maintenance

- Staffing the Title IX program

- Coordinating resolutions

- Managing investigations

- Record keeping

6 weeks of 90-minute training sessions.

Certification of training issued by CLCS upon completion.

Title IX Coordinator Course Outline

Session 1: Duties and Responsibilities of a Title IX Coordinator, Building a Title IX Program, and Developing Title IX Policies and Procedures

Session 2: Receiving and Responding to Complaints, Interim Measures, Strategies for Establishing Rapport & Optimizing Interviews

Session 3: Considerations for Specific Student Populations & Trauma-Informed Approaches

Session 4: Managing Informal Resolutions

Session 5: Managing Formal Resolutions, including Best Practices for Investigations

Session 6: Record Keeping and External Complaints to the Department of Education

Session 1 Handouts

Handout 1 – Charter School DCL May 2014

Handout 2 – August 2020 Title IX Regulation
Summary

Handout 3 – July 2021 Questions and Answers

Handout 4 – Title IX Coordinator Job Description

Handout 5 – CDE Title IX Policy Checklist

Handout 6 – Online Standards Policy Example

Handout 7 – Policy & Procedures Example

A Brief History of Title IX



Title IX of the 1972 Educational Amendments to the Civil Rights Act of 1964

"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."

Passed in 1972 as a part of Educational Amendments to the 1964 Civil Rights Act

Protects students, employees, applicants, etc.

Applies to academic and non-academic activities, such as sports and extra-curricular programs

Prohibits harassment and discrimination on the basis of sex and gender, including sexual harassment and sexual violence.

Title IX

*"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.**"*

"Receiving Federal financial assistance" means it is enforced against all public schools, including charter schools (see **Handout 1 - May 2014 DCL**)

Responsibility of the US Department of Education (DOE)

Enforced by the DOE's Office of Civil Rights (OCR)

Supreme Court decisions and guidance from the U.S. Department of Education have given it a broad scope covering sexual harassment and sexual violence.

Title IX

Under Title IX, schools are legally required to respond and remedy hostile educational environments and failure to do so is a violation that means a school could risk losing its federal funding.

Between 1972-2020, the DOE relied on regulatory and enforcement actions to ensure schools complied with Title IX.

The Trump administration took a different approach and issued Title IX regulations which went to effect on August 14, 2020.

Title IX

During this training, I will refer to the Obama and Trump administration's approaches to Title IX enforcement. My comments are meant to be informative and not political.

Generally, the Bush and Obama administrations relied on an enforcement structure that was based on Dear Colleague Letters (DCLs) which are statements of how the DOE interprets and enforces Title IX.

The Trump administration revoked the Obama-era DCLs and went through a rule-making process to enact regulations for Title IX enforcement.

See [Handout 2 – Summary of Major Provisions](#) of these regulations.

Expect significant changes in Title IX interpretation and enforcement under the Biden administration under the direction of Department of Education Secretary Miguel Cardona. See [Handout 3 – July 2021 Q&A](#)

The August 2020 Title IX Regulations



2020 Title IX Regulations

The Trump administration issued Title IX regulations on August 14, 2020.

The regulations have been controversial with criticisms from many constituencies.

The Biden administration will likely try to alter the regulations in some way but it is not clear when and how those changes will take place.

Be sure to look for Title IX updates from the CLCS in the coming months and years!

2020 Title IX Regulations

Sets forth requirements for responding to **sexual harassment**.

K-12 schools must investigate or act upon a formal complaint of sex harassment but absent a formal complaint, it must offer support services to complainant/victim.

Allows for formal and informal resolutions.

Outline requirements for grievance procedures, investigations, etc.

Requires schools to designate a Title IX Coordinator.

2020 Title IX Regulations: Sexual Harassment

Definition: “*unwelcome conduct that is so severe, pervasive, or **objectively** offensive that it denies a person access*” to the educational program or activity

Includes:

Quid pro quo (“this for that”)

Sexual violence, including domestic violence, dating violence, and stalking

2020 Title IX Regulations: Jurisdiction

Schools have jurisdiction and must act on reports or complaints if:

A school employee has actual knowledge of sexual harassment; or

If harassment occurs within a school activity or program.

School must not act with “deliberate indifference” towards a complaint or report.

2020 Title IX Regulations: Standard of Evidence

Schools must choose and publish the standard of evidence they use in Title IX cases:

Preponderance of the Evidence
"more likely than not that the harassment occurred"

Clear and Convincing
"substantially more probable that it occurred than not"

Whichever standard the school chooses, that standard must be used for all student and employee conduct issues.

2020 Title IX Regulations: Dismissal of Complaints

Dismissal of a complaint must occur when:

Conduct would not constitute sexual harassment; OR

Conduct did not occur within the school's function/program/activity.

Dismissal of a complaint may occur if:

Complaint is withdrawn in writing;

Accused is no longer enrolled or employed; OR

The school cannot collect sufficient evidence to determine a violation.

NOTE: If action cannot be taken under Title IX, the issue can be addressed through code of conduct or other policies.

Title IX Coordinators

Requirements from the 2020 Title IX Regulations

Title IX Coordinator: The employee designated by a recipient to coordinate its efforts to comply with Title IX responsibilities

A school is obligated to ensure its educational community knows how to report to **the Title IX Coordinator**.

Students, employees, applicants for admission and employment, parents or legal guardians of elementary and secondary school students, and all unions must be provided with the name, title, office address, e-mail address, and telephone number of the Title IX Coordinator.

Schools must prominently display on their websites the required contact information for the Title IX Coordinator.

Who can be a Title IX Coordinator?

Must be the person primarily responsible for Title IX compliance.

CANNOT be a principal or athletic director.

Can be another school leader.

Must be trained in Title IX compliance, investigation, and resolution processes.

Understand civil rights compliance.

Clearly identified on school website, resource documents, directories, etc.

See [Handout 4 – Title IX Coordinator Job Description](#)

Core Responsibilities of a Title IX Coordinator

Develop and maintain a working knowledge of Title IX and its implementing regulations. Keep up with legal and judicial decisions related to Title IX and gender equity.

Keep informed of state laws, regulations and policies on equity issues including bullying, harassment, and child abuse.

Knowledgeable of federal and state laws prohibiting discrimination against protected classes (including race, disability, and sexual orientation).

Core Responsibilities of a Title IX Coordinator

Create and publish policies to address sex harassment within the school.

Assess the school's practices and policies with respect to treatment of female and male students.

Develop program to eliminate sex discrimination, including training students and staff regarding sexual harassment.

Attend training specifically for Title IX Coordinators and share the information with employees and faculty.

Responsibilities of Title IX Coordinator during the Complaint Process

Coordinate supportive measures for the complainant in order to restore and/or preserve equal access to their education program or activity.

Present both parties with the option of an informal resolution and be prepared to facilitate the process.

Be informed about the 2020 regulations, especially regarding the distinct roles of Investigator and Decision-Maker.

Facilitate training for Investigators and Decision-Makers.

Oversee the investigation process ensuring that both parties receive notice of the allegations, both parties have equal opportunities to present facts and evidence, and that the Investigator follows the time frames as listed in the new regulations.

Responsibilities of Title IX Coordinator during the Complaint Process

Ensure that all involved parties (complainant and respondent) have advisors. This role can be filled by parents or guardians, lawyers, or other adults. A Title IX Coordinator cannot be the advisor.

Presume innocence. Confirm that the Investigator and Decision-Maker include this presumption as they conduct their work.

Dismiss allegations that do not meet the DOE's definition of sex harassment or do not occur within the school's education programs.

Building a Title IX Program

NOTE: Charters should clarify Title IX responsibilities vis-à-vis the school district

- Will the school rely on the district anti-discrimination and harassment policies and procedures or develop their own?
- Can the school rely on the district's Title IX Coordinator or must they have their own?
- Is the school district or the charter school responsible for overall Title IX compliance?
- Is the school district or the charter school responsible for responding to Title IX complaints?

- Designate a Title IX Coordinator and qualified staff to support the program.
- Develop and PROMINENTLY publish anti-harassment policies and complaint resolution processes on the school's website but also in handbooks and other resources.
- Conduct annual training for:
 - Staff
 - Board
 - Students (Age-appropriate)
- Establish investigation strategies including having identified trained, qualified investigator(s).
- See **Handout 5 – CDE Checklist**

Building a Title IX Program

- Title IX Coordinator
- Investigator(s) – internal and external
- Decision-Maker(s) - a Title IX Coordinator cannot be a decision-maker
- Appeals – someone well placed in the organization to review the decision

The school must commit to training these staff members for their roles!



Designate
Qualified Staff

Commit to provide a safe learning and work environment.

Commit to treat all members of the school community with dignity and respect.

Identify that the school is subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of sex.

- Can be a part of a broader nondiscrimination policy

Outline how the school will address concerns regarding unlawful discrimination and harassment, and any related retaliation for having engaged in activity protected by the civil rights laws that prohibit discrimination, including harassment.

Articulate the standard of evidence the school will use.

Prohibit retaliation for reporting sex harassment.



Develop +
Publish
Policies

Training helps set a tone and send a message that the rules apply to everyone.

Plan annual, age-appropriate training for :

- Students
- Staff
- Board

Consider training for other constituent groups (parents, volunteers, etc.)

Ensure that the groups receive the same information and same message through the training

Community Training and Education

Annual training plans for:

- Title IX Coordinator(s)
- Investigators
- Decision-makers

Consider training for other constituent groups (parents, volunteers, etc.)

Ensure that the groups receive the same information and same message

Training and Education: Title IX Functions

Define a process for investigation:

- Describe the process
- Outline communications with impacted and responding parties
- Collection of evidence
- Informal resolutions
- Formal processes

Outline the documentation needed:

- Written statements
- Evidence
- Reports

Establish
Investigation
Processes and
Protocols

Internal Resources:

- Should not be the Title IX coordinator, a principal, or person with disciplinary authority
- Trained and to the extent possible, experienced
- Someone with the emotional intelligence to investigate issues involving sexual misconduct

External Investigators:

- Look for an attorney or other professional with experience in civil rights matters.
- Sexual misconduct constitutes particular challenges – look for someone with experience in trauma-informed investigation techniques.

Appropriate Investigation Resources

Developing Title IX Policies and Programs



NOTE: Remote/Online Instruction

Charter schools should have a policy that pertains to harassment that occurs within its online or remote learning programs to clearly define when the school will take action.

Consider a stand-alone policy (see **Handout 6**) or including a statement in your nondiscrimination or technology use policies, such as:

ONLINE HARASSMENT: Harassment is prohibited at [school], as specified in the [link to policy]. Online programs are held to the same standards and expectations as in-person classes and any harassment that occurs in the context of online instruction will be addressed by [school]. Online harassment includes, but is not limited to, remarks, gestures, communications, or writings displayed on school IT systems or programs used for instructional purposes. Online activities that are not associated with sanctioned instructional platforms by [school] do not fall within this policy and the school will encourage community members to direct those complaints to appropriate authorities (such as law enforcement). Community Members who believe they are victims of harassment should report such occurrences to the Title IX Coordinator.

Develop + Publish Policies

- Create a stand-alone policy and procedures to manage sexual harassment complaints – see **Handout 7** for an example.
- Incorporate the policy into student handbooks, parent handbooks, employee manuals, etc.
- Update all websites to include the policy and procedures.
- Be sure to include a retaliation prohibition!

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Develop + Publish Policies:

Address mandatory reporting requirements

- C.R.S. section 19-3-304 sets forth statutory requirements for reporting child abuse or neglect.
- Applies to public school officials and employees.
- Report to:
 - Local law enforcement
 - County Department of Human Services
 - Colorado Child Abuse & Neglect Hotline (1-844-CO-4-KIDS)

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Develop + Publish Policies: Establish Investigation Processes and Protocols + ●

- Define a process for investigation:
 - Outline communications with complainant and responding parties
 - Explain how evidence will be collected
 - Describe how the school will manage informal resolutions and formal processes
- Outline the documentation associated with investigation:
 - Written statements forms
 - Evidence
 - Investigation reports
- The evidence collected must be sent to the parties for their review and they can submit a written response.

Develop + Publish Policies:

Key Provisions

- The parties must be sent evidence collected through the investigation and given 10 days to respond in writing to the evidence.
- Once an investigation report is created, the school must provide the report to both parties and give them 10 days to respond to the report.
- The process must allow the parties to submit written questions regarding the report, provide each party with the answers, and allow for additional follow-up questions before determining responsibility.
- Decision-makers must consider the evidence, the report and the parties' responses while making a decision.

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Develop + Publish Policies: Build a Culture of Compliance

- Set the right tone at the highest levels:
 - Board and school leadership must commit to the letter and spirit of the policies.
 - Leadership must model appropriate behavior.
 - Make it clear: retaliation is not tolerated.
 - Ask for feedback on training, policies, etc.
- Follow a consistent process:
 - Checklist for how the school addresses complaints and reports.
 - Build trust in people and process.
 - Be transparent to the extent possible in light of confidentiality obligations.

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Helpful Links

The Title IX Law: <https://www.justice.gov/crt/title-ix-education-amendments-1972>

US Department of Education Site:
<https://sites.ed.gov/titleix/>

Colorado Department of Education Resources:
https://www.cde.state.co.us/cde_english/titleix

Analysis of Title IX's future under the Biden Administration:
<https://www.insidehighered.com/news/2021/01/22/biden-faces-title-ix-battle-complicated-politics-and-his-own-history>

Next Session September 2

~~Session 1: Duties and Responsibilities of a Title IX Coordinator, Building a Title IX Program, Developing a Title IX Policy and Procedures~~

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