

North Carolina Coalition Against Sexual Assault

**NCCASA**

EDUCATION



ADVOCACY



LEGISLATION

**TITLE IX**

**and**

**SEXUAL VIOLENCE**

**in**

**K-12 SCHOOLS**

**BASICS FOR COMMUNITY PARTNERS**

*Naomi Broadway, MSW Candidate, UNC-CH*

*Molly Marcotte, BA and BS Candidate, Guilford College*

## WHAT IS TITLE IX AND HOW IS IT SEXUAL VIOLENCE RELATED?

- Title IX of the Educational Amendments of 1972, often simply referred to as Title IX, prohibits discrimination in education on the basis of sex.
- Title IX prohibits sex discrimination in areas such as sports options, class options and sex-based harassment in federally funded educational settings.
- Sexual violence is considered a type of sex-based harassment; therefore, schools are mandated by Title IX to appropriately prevent and respond to sexual violence.
- Behaviors might be considered sex-based harassment if they are “severe, pervasive and objectively offensive”, and limiting the victim’s access to education.

## WHO DOES TITLE IX APPLY TO?

- Title IX applies to both students and employees of schools.
- Title IX does not only apply to girls, but to anyone discriminated against on the basis of sex.
- This also includes real or presumed gender identity and those do not conform to stereotypical gender norms.
- The perpetrator does not have to be a different gender for incidents to be considered sex-based harassment.
- Real or perceived sexual orientation of victim or anti-LGBTQ+ behavior accompanying sex-based harassment does not negate the Title IX responsibility.

## WHEN DOES TITLE IX APPLY?

- Title IX applies to all school programs and extracurricular activities, including sports, classes/educational opportunities and clubs.
- Title IX guarantees the right to education free from discrimination on the basis of sex, including a hostile environment created by sex-based harassment and sexual violence.

## WHERE DOES TITLE IX APPLY?

- Title IX is applicable to any educational setting that receives federal funding.
- In cases of sexual harassment and sexual violence, incidents may occur on or off school property, including school-sponsored activities off campus.
- If a victim of sexual harassment or sexual violence attends school with their perpetrator, they can file a Title IX grievance with the school due to hostile educational environment.
- Every Title IX grievance filed must be investigated.
- Schools are not allowed to discourage reporting or retaliate for reporting.
- Schools are then responsible for investigating the grievance and determining remedies for the victim and discipline for the perpetrator.

## WHAT ARE SCHOOLS' RESPONSIBILITIES UNDER TITLE IX?

Title IX requires that:

- Every school must be assigned a Title IX coordinator.
  - In K-12 schools, this is usually one person serving as coordinator for the entire district.
  - The coordinator's contact information should be posted and accessible in both print and online.
- Anti-sex discrimination policies should be posted and made available to school community, including students, parents and employees.
- Each school must have established grievance procedures.
  - These procedures should also be made available to the school community.

## WHAT DOES THE TITLE IX COORDINATOR DO?

- The Title IX coordinator is responsible for ensuring that schools are in compliance with the law.
- Every school must be assigned a Title IX coordinator—in K-12 schools, this is usually a coordinator at the district level.

- The coordinator must be knowledgeable about the policies and practices ensuring a gender equitable environment, as well as the process for filing a Title IX grievance.
- Coordinators often also serve as the investigators of grievances.
- The OCR recommends that Title IX coordinators be consulted in the investigation procedures if they are not the primary investigators.
- Coordinators are responsible for monitoring school climate and programs for gender equity.
- They should also serve as the technical assistance providers about sex discrimination and Title IX to students and other employees.
- Coordinators are responsible for maintaining records of Title IX grievances and investigations.

*The Office of Civil Rights (OCR) recommends that the Title IX coordinator be an employee with some authority and that they be fully supported by administration, in order to be able to most effectively carry out their duties. They should have adequate training on Title IX, as well as sexual violence prevention and response.*

## GRIEVANCE PROCEDURES

***The OCR requires that grievance procedures provide for prompt and equitable resolutions. Schools are required to eliminate the hostile environment occurring due to sexual violence, prevent recurrence and remedy effects. The OCR recommends:***

- Accessible language for the audience in posted policies and procedures
- Policies that clarify that sexual harassment and sexual violence are types of sex discrimination
- Designated time frames in which investigations are required to be completed: the whole process should take less than 60 days.
- Opportunity for complainant and perpetrator to provide witnesses and evidence
- Notice of outcome given to both complainant and perpetrator
- Options for confidential reporting
- Sharing information between investigations as much as possible to avoid re-traumatization

## HOW IS A TITLE IX INVESTIGATION DISTINCT FROM A CRIMINAL INVESTIGATION?

- The major difference between criminal investigations and Title IX investigations is that Title IX is focused on protecting equal access to education, a civil right.
- No criminal report or investigation is required for a Title IX grievance to be filed.
- There may be certain district or school policies that require disclosure of incidents to law enforcement.
- By North Carolina state statute, school principals are required to notify law enforcement when they have knowledge of certain criminal offenses, including sexual assault and rape, occurring on school property.
- Title IX investigations have a lower burden of proof than criminal ones do—called the *preponderance of evidence* standard (as opposed to *beyond a reasonable doubt*).
- Victims filing Title IX grievances should be made aware that they may also file a report with law enforcement.
- Schools should not wait for criminal investigations to be concluded before conducting their own investigations or establishing remedies.
- A Title IX investigation will never result in someone being imprisoned or otherwise criminally sanctioned.
- While criminal investigations proceed according to the discretion of law enforcement, discretion is not used in Title IX investigations—every complaint must be investigated.

## WHAT ABOUT MANDATORY REPORTING?

In North Carolina, everyone is a mandatory reporter when they have suspicion of child abuse by the child's parent, guardian, custodian or caretaker. Principals in schools are required to notify law enforcement when they have knowledge of certain criminal offenses, including sexual assault and rape, occurring on school

property. For other employees, there is not a legal obligation of reporting, though there may be school or district policies in place. **For more information see the [NCCASA website](#).**

### WHAT HAPPENS DURING A TITLE IX INVESTIGATION?

- The OCR allows schools to determine their own investigative procedures.
- Investigators will usually conduct interviews with complainant, perpetrator and witnesses, as well as review student documents and law enforcement notes.
- All parties involved must be given the same notices and options such as representation, information, and if part of the process, right to appeal. At the conclusion of the investigation, both parties must be given notice of the results.
- Complainants have the option to request confidentiality during the investigative process.

### HOW IS TITLE IX DIFFERENT IN K-12 SCHOOLS?

- In higher education, sexual harassment and sexual violence are violations of the student code of conduct.
- Hearings are held to determine discipline and sanctions for perpetrators. K-12 schools do not use the hearing system.
- There are also more limits to confidentiality for minors.

### WHEN DO YOU MAKE A COMPLAINT WITH THE OFFICE OF CIVIL RIGHTS?

If a student and/or student's parent/guardian is dissatisfied with the school's response to a Title IX claim, they may make a complaint with the OCR. The OCR may then investigate the school to determine if the school dialed to meet their obligations under Title IX. Some ways the OCR evaluates this are:

- If the school "knew or should have known" what was occurring, yet did not take steps to address it.
- If the school discouraged victims from filing a formal grievance.
- If the school retaliated toward victims for reporting.
- If schools acted deliberately indifferent to a situation
- If the school's response was adequate and reasonable given knowledge and resources.

An OCR investigation is separate from private lawsuits. Victims may also choose to sue educational institutions that they feel did not uphold their responsibilities

under Title IX. Civil courts will consider some of the same actions as OCR investigations. Educational institutions may then be responsible for monetary damages.

## WHAT ARE SOME EXAMPLES OF REMEDIES?

Some possible remedies for cases of sex-based harassment are:

- Stay away orders
- Modified class schedules
- Re-assigned desk or locker
- Escorts for victims when moving through classes and activities
- Counseling
- Medical services
- Re-assigning perpetrator to a different school in district
- Academic support (e.g. tutoring)
- Allowing victims to re-take courses or withdraw from courses as needed

## HOW CAN YOUR AGENCY WORK WITH SCHOOL DISTRICTS?

Establish relationships with Title IX coordinators, as well as principals, counselors and other school employees. This might be through an official *Memorandum of Understanding (MOU)*. Your agency can:

1. Act as sexual violence experts and serve as consultants for school districts improving their Title IX compliance around sexual violence.
2. Work with schools to provide and evaluate sexual violence prevention programming.
3. Partner with schools to provide resources for victims of sexual violence, such as counseling.
4. Serve as consultants to evaluate current and/or develop new Title IX policies and procedures.
5. Provide training for district employees on Title IX, their responsibilities, recognizing sexual violence and their part in prevention.
6. Serve as confidential resource for victims, educating them about their rights and options under Title IX.
7. Provide agency promotional materials for schools to distribute to students, employees and parents.

## NCCASA CAN HELP BY PROVIDING:

1. In-depth training and technical assistance about Title IX.
2. Assistance facilitating communication between your agency and local schools.
3. Technical assistance related to evidence based prevention programming and practices.
4. An evaluation of current/proposed policies related to sexual violence and/or Title IX.

## FOR MORE INFORMATION:

More information about Title IX can be found on the [Office of Civil Rights website](#).

Contact Jen Przewoznik, NCCASA Director of Prevention and Evaluation at 919-871-1015 or [jen@nccasa.org](mailto:jen@nccasa.org)

Thank you to the Missouri Coalition Against Domestic and Sexual Violence, whose technical assistance document on Title IX this report drew from.

All information referenced in this document comes from the [OCR guidance: Questions and Answers on Title IX and Sexual Violence](#) (April 29, 2014).