NEW MEXICO PUBLIC EDUCATION DEPARTMENT

Title IX and Sex Discrimination Reporting and Complaint Procedures

Procedures for K-12 Settings

The State of New Mexico

Title IX and Sex Discrimination Reporting and Complaint Procedures:

Procedures for K-12 Settings

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Introduction

This document outlines the procedures and guidelines for handling sex-based discrimination complaints in compliance with Title IX of the Education Amendments Act of 1972 (codified at 20 U.S.C. Sections 1681, et seq.), and its implementing regulations at 34 C.F.R. Part 106. This guidance is designed to ensure recipients of federal funds comply with federal Title IX regulations and promote fairness, equity, and safety within educational institutions under our jurisdiction.

Title IX is a critical federal law ensuring equal opportunities and protections against discrimination on the basis of sex in education programs or activities that receive federal financial assistance. Title IX states:

> "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 program or activity receiving Federal financial assistance."

The New Mexico Public Education Department (PED), including its Division of Vocational Rehabilitation (DVR), complies with Title IX. The PED values diversity and does not discriminate on the basis of race, color, sex, national origin, disability, age, or sexual orientation in its programs and activities.

Current Legal Landscape

The legal and regulatory framework is currently in flux. The 2024 Title IX final rule was invalidated nationwide by a federal court decision in January of 2025. The U.S. Department of Education (ED) has directed recipients to instead follow the 2020 Title IX regulations. The 2020 rule does not explicitly include gender identity within the definition of sex discrimination; therefore, there is some inconsistency with how Title IX is interpreted based on State laws.

Two Executive Orders were issued in 2025 which directed agencies to interpret Title IX based on biological sex and prioritize enforcement of this interpretation in relation to athletics and facilities. However, federal courts are divided on whether Title IX protections extend to gender identity, and in some cases this conflicts with State law. The U.S. Supreme Court is set to address transgender participation in school athletics in a decision that is expected by June of 2026. Since there is no settled definition of the term "sex" under Title IX, recipients should comply with State law, monitor ongoing legal developments, and contact PED with any questions.

Title IX Requirements Overview

Under the 2020 Title IX regulations, recipients of federal financial assistance are required to respond to allegations of sex discrimination, including sexual harassment, in a manner that is prompt, equitable, and consistent with federal law.

Title IX applies to conduct that occurs within an education program or activity. This includes locations, events, or circumstances over which the recipient exercises substantial control, and may include both on-campus and certain off-campus conduct. The complainant must be participating in, or attempting to participate in, the education program or activity at the time of the alleged conduct.

Sexual harassment, as defined by the regulations, means conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
3. Conduct that constitutes sexual assault, dating violence, domestic violence, or stalking (as defined by federal law).

A recipient with actual knowledge of sexual harassment must respond promptly in a manner that is not deliberately indifferent. A response is considered deliberately indifferent only where it is clearly unreasonable in light of the known circumstances. In the K-12 context, actual knowledge exists when notice is provided to the Title IX Coordinator, any official with authority to institute corrective measures, or any employee of the recipient. Employees who receive information are required to report it to the Title IX Coordinator.

When a complaint is filed, the recipient must follow grievance procedures that comply with federal regulations. This includes providing notice of the allegation to all parties, conducting an objective investigation, allowing both parties an opportunity to present evidence, and issuing a written determination regarding responsibility. The process must be carried out by trained individuals who are free from conflicts of interest or bias, and it must include a presumption that respondent is not responsible for the alleged conduct until a determination is made. At any time prior to determining whether sex discrimination occurred, a recipient may offer to a complainant and respondent an informal resolution process, unless the complaint includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student or such a process would conflict with federal, state or local law.

Scope and Local Education Agency (LEA) Responsibilities

Title IX applies to all public and private educational institutions receiving federal education funds. The entire institution must comply if any part of the institution receives federal assistance. For example, if a private school participates in the federal school lunch program, it would be a "recipient" subject to Title IX. Private schools that receive equitable services only are not "recipients" of federal funds. Applicable institutions are referred to as "recipients." Title IX obligates all recipients to comply with the federal law, with some limited exceptions set out in the statutes and regulations.

Nondiscrimination Policy and Notice of Nondiscrimination

LEAs and private schools (if receiving federal funds) must adopt, publish, and implement a policy stating that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and 34 CFR Part 106, including in admission and employment.

LEAs and private schools (if receiving federal funds) are also required to provide a notice of nondiscrimination to students, guardians of elementary and secondary students, prospective and current employees, applicants for admission, and all unions and professional organizations holding collective bargaining or professional agreements with the recipient. That notice must include:

1. A statement that the LEA or the private school (if receiving federal funds) does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX;
2. A statement that inquiries about the application of Title IX to the recipient may be referred to the recipient's Title IX Coordinator, the Office for Civil Rights, or both;
3. The name, office address, email address, and telephone number of the recipient's Title IX Coordinator;
4. How to locate the recipient's nondiscrimination policy and grievance procedures;
5. How to report information about conduct that may constitute sex discrimination and how to make a complaint of sex discrimination.

Title IX Coordinator Responsibilities

A Title IX Coordinator is responsible for monitoring the overall implementation of Title IX for the LEA or school and coordinating the institution's compliance with Title IX in all areas covered by the implementing regulations. Their primary responsibility is the prevention of and response to sexual harassment and discrimination.

Title IX Coordinators must:

- Develop a working knowledge of the federal Title IX law and its implementing regulations. Have a copy of the Title IX regulations readily available and understand the requirements and the intent of the law. Keep informed of current research and judicial decisions related to Title IX and gender equity.
- Coordinate grievance procedures for Title IX complaints, including assisting students and parents, and other complainants in filing and investigating complaints.
- Be informed about state laws, regulations, and policies on all equity issues, including bullying, harassment, and child abuse laws.
- Be knowledgeable of federal and state laws (e.g., the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Individuals with Disabilities Education Act) prohibiting discrimination against all protected classes—including race, religion, and sexual orientation—and assist whenever possible.
- Understand the LEA's recordkeeping policies and the record keeping requirements of the Title IX regulations.
- Work to decrease discrimination in the school district or school.
- Provide program development, including in-service training, to eliminate sex discrimination in the LEA or school and meet the training requirements of the Title IX regulations.
- Monitor the LEA's or school's educational programs and activities for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX and take steps to address the barriers.
- In response to a complaint, the Title IX Coordinator must notify the complainant or the individual who reported the conduct of the grievance procedures, and, if applicable, the informal resolution process.
- Title IX Coordinators must treat complainants and respondents equitably, by offering supportive measures to a complainant, and by following the proper grievance procedure before the imposition of disciplinary sanctions against a respondent.
- Supportive measures are "individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to restore or preserve a party's access to the educational program or activity and provide support during the grievance procedures or informal resolution process. These measures may include but are not limited to: counseling; extensions of deadlines and other course-related

adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

The Title IX Coordinator should also:

- Consider attending state and national conferences specifically for Title IX coordinators or on sex discrimination issues, generally, and share the information with local administrators, staff, and faculty.
- Provide updated resources on Title IX to local school districts and schools.
- Consider other programs' requirements on gender and sex.

Monitoring Compliance

Title IX Coordinators should monitor the prevention of sexual harassment and discrimination. This includes the following areas:

- Admissions and Recruitment
- Education Programs and Activities, including:
    - housing;
    - comparable facilities;
    - access to classes and schools;
    - research;
    - counseling and related materials;
    - access to institutions of vocational education;
    - participation in extracurricular activities;
    - financial assistance;
    - employment assistance to students;
    - health services and insurance;
    - marital, family, or parental status;
    - pregnancy or related conditions;

    - athletics;
    - textbooks and curricular materials; or
    - standards for measuring skill or progress in physical education classes.
- Employment in Education Programs and Activities:
    - employment,
    - employment criteria,
    - recruitment,
    - compensation,
    - job classification and structure,
    - fringe benefits,
    - marital, family, or parental status,
    - pregnancy or related conditions,
    - advertising,
    - pre-employment inquiries.

Other areas of consideration include:

- Developing a committee to assist in meeting Title IX obligations.
- Participating in the development and implementation of the LEA's or school's sexual harassment policy. Be aware of new needs that may dictate changes or revisions in existing policies or practices. For example, since sexual harassment is a violation of Title IX, you should include a prohibition of sexual harassment in the school district's or school's list of disciplinary infractions.
- Assisting faculty, counselors, and administrators in complying with Title IX and, when a need arises, planning remedial actions.
- Making your presence known in the community by disseminating civil rights information or by speaking at parent-teacher group meetings, social or professional organization meetings, and other community functions.
- For LEA Title IX Coordinators, serving as a resource to the local superintendent on Title IX issues and submitting annual reports on Title IX compliance activities to the district superintendent.
- Monitoring and evaluating the LEA's or school's Title IX compliance efforts and making recommendations for any appropriate changes.

- Providing updated information to the LEA and schools on Title IX implementation and issues.
- Maintaining contact with the appropriate PED personnel and with the federal regional equity assistance center.
- Identifying and disseminating information in various formats about Title IX educational resources to appropriate organizations and individuals.

Responding to Complaints

Complaints

A complaint may be filed by a complainant, a parent or authorized legal representative, or the Title IX Coordinator. For complaints of sex discrimination other than sex-based harassment, complaints may also be filed by an employee or any person who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

LEAs and private schools may wish to have copies of complaint or other related forms available in libraries or other areas for students, parents, school personnel, or other complainants who allege sex-based discrimination. Title IX Coordinators can assist them in filing their complaint and assist administrative personnel who may need a better understanding of the Title IX grievance process.

Grievance Procedures

Adoption and publication of written procedures to provide prompt and equitable resolution of complaints is critical. Grievance procedures must be made public. These procedures must be designed to ensure fairness to all parties while maintaining compliance with Title IX's requirements. Grievance procedures must follow the requirements included below.

Upon receipt of the complaint, recipients must initiate their grievance procedures and provide written notice of the allegations to known parties, including sufficient detail to allow for meaningful response.

Grievance procedures must treat complainants and respondents equitably and include a presumption that the respondent is not responsible for the alleged conduct unless and until a determination is made. The process must be conducted by trained, impartial personnel free from conflicts of interest or bias. Recipients must establish reasonably prompt timeframes for each stage of the process, while allowing for limited extension for good cause with notice to the parties.

The recipient bears the burden of conducting an adequate, reliable, and impartial investigation. The recipient should use a trained investigator who is free of bias and does not have a conflict of interest. Both parties must have an equal opportunity to present relevant evidence and witnesses. The recipient must objectively evaluate all relevant

evidence, including both inculpatory (implying guilt) and exculpatory (implying no guilt). The recipient may not rely on impermissible evidence, such as privileged information or certain evidence regarding a complainant's prior sexual conduct, except in limited circumstances. Following an investigation, the recipient must provide the parties with equal access to relevant evidence or a summary of that evidence and an opportunity to respond.

Title IX regulations permit the designation of a "decisionmaker," who effectively acts as a judge in Title IX cases. They preside over hearings, if applicable, and issue a written determination. They monitor the questioning and cross-examination process and identify irrelevant questions. The decisionmaker must be able to question parties and witnesses as necessary to assess credibility when relevant and disputed. At the end of the process, they weigh the evidence to determine if it meets the LEA's or (if applicable) the private school's standard of sexual harassment allegations. The written determination must include the outcome, rationale, and information about any available appeal process. If a violation is found, the recipient must implement appropriate remedies and disciplinary sanctions and take steps to prevent recurrence.

The recipient may dismiss a complaint in limited circumstances, such as when the alleged conduct would not constitute sex discrimination or the complainant withdraws allegations. Both parties must be notified of any dismissal and provided an opportunity to appeal.

Informal Resolution Process

A recipient may offer an informal resolution process as an alternative to its grievance procedures at any time prior to a determination of whether sex discrimination occurred, provided that the complaint does not involve allegations of an employee engaging in sex-based harassment of an elementary or secondary school student and the process does not conflict with applicable law. The decision to offer informal resolution is within the recipient's discretion, and recipients may decline to offer such a process where appropriate, including where the alleged conduct presents a potential risk of harm to others.

Participation in informal resolution must be voluntary; recipients must not pressure either party to participate and must obtain the informed, written consent of all parties before initiating the process. Recipients are still required to provide clear notice of allegations, an explanation of the process, and that the parties may withdraw at any time. Parties may choose to resume the formal grievance procedures at any time. Parties should also be notified that any agreement is final and precludes further resolution of the same allegations.

The individual facilitating the process must be trained, impartial, and free from conflicts of interest or bias. The facilitator must not be the same person as the investigator or decisionmaker in the same matter. Informal resolution agreements may include a range of terms, such as restrictions on contact or participation in activities. The Title IX Coordinator is responsible for ensuring appropriate steps are taken to prevent recurrence.

Filing A Complaint With the Grievance Process or Outcome

If there is dissatisfaction with the LEA or (if applicable) private school's grievance process or outcome, parties may contact the U.S. Department of Education, Office for Civil Rights (OCR).

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100
Email: OCR@ed.gov, fax: (202) 453-6012
https://www2.ed.gov/about/offices/list/ocr/complaintintro.html

How to File a Discrimination Complaint Regarding a Grievance Procedure with the Office for Civil Rights

Instructions and forms are available here.

Confidentiality

The recipient must ensure confidentiality to the greatest extent possible throughout the complaint process, while also balancing the need for transparency and accountability. It must comply with all applicable privacy laws and regulations.

Non-Retaliation

The recipient must prohibit retaliation against individuals involved in the Title IX complaint process, whether as complainants, respondents, witnesses, or advocates. It must encourage reporting of any alleged retaliation for prompt investigation and remediation.

External Reporting Requirements

The recipient must comply with federal reporting requirements by submitting necessary data and reports to relevant federal agencies, such as the U.S. Department of Education's OCR.

Continuous Improvement

The recipient must regularly review and update Title IX policies, procedures, and practices based on feedback, best practices, legal developments, and emerging issues to ensure continuous improvement and effectiveness.

Public Awareness

The recipient should promote public awareness of Title IX rights and resources through outreach, education, and communication efforts targeting students, parents, faculty, staff, and community members.

Compliance Review

The recipient must periodically conduct internal compliance reviews and audits to assess adherence to Title IX requirements, identify potential areas of concern, and implement corrective actions as needed.

Parent/Guardian Complaint and Appeals

Parents have the right to file complaints about matters affecting a child's education. Issues addressing sex discrimination, pregnancy discrimination, sexual harassment, and sexual violence may be considered as part of a violation of the federal Title IX regulations.

Anyone who believes that a school has discriminated against a student based on race, color, national origin, sex, disability, or age can file a complaint of discrimination with OCR. To file a complaint, visit OCR's Electronic Complaint System webpage. OCR is available to provide technical assistance on the application of its laws to discrimination on these bases.

All employees, particularly supervisors, have a responsibility for keeping our schools and work environments free of harassment and discrimination. Any non-confidential employee who becomes aware of an incident of alleged Title IX discrimination or harassment, whether by witnessing the incident or being told of it, must report it to the Title IX Coordinator. This reporting obligation is in addition to a school employee's reporting obligations to appropriate officials pursuant to law and mandatory reporting of child abuse, neglect, or educational neglect, when the employee has a reasonable belief that a student is being sexually abused or subjected to other forms of abuse and neglect prohibited by law.

Any Title IX report made of alleged sex-based discrimination must be addressed in a timely manner and reported directly to the Title IX Coordinator at the school. Site principals or district-level supervisors are responsible for ensuring that sex-based discrimination reports are directed to the necessary school security personnel as well as the Title IX Coordinator.

Who May File a Complaint

Complainants who believe an incident of sex-based discrimination has occurred should report the incident immediately to their Title IX Coordinator. Complainants may include students, families, parents and guardians, and employees.

Filing a Formal Title IX Complaint

The first place to start to submit a complaint alleging discriminatory action or treatment prohibited by Title IX is to contact the appropriate Title IX Coordinator. An oral complaint may be discussed with the school district or school and there may be an effective strategy to quickly resolve a concern. However, further investigation will require a formal written complaint to initiate a grievance review. The school district or school can provide the necessary form or link to their formal complaint system.

After a complaint has been submitted, the Title IX Coordinator shall initiate an investigation or inform the complainant in writing that the matters alleged in the complaint are not within the jurisdiction or authority of the school district or school to investigate so no further investigations will be conducted. If the matter does not involve allegations of sex-based discrimination, the Title IX Coordinator shall forward the matter to the proper administrative authority for review. The Title IX Coordinator shall notify both the complainant and person or persons alleged to have engaged in discriminatory behavior in writing that a complaint has been received. The Title IX Coordinator and investigator should make every reasonable effort to ensure that the investigation is completed within the appropriate timeline, according to the school district or school that received the complaint. The Title IX Coordinator shall oversee this process.

If the investigator determines that the evidence supports the allegations of discrimination by the respondent, the investigator shall provide written findings and conclusions supporting the determination. In addition, the written determination shall recommend to immediately end the discriminatory conduct; ways to remedy the discriminatory behavior and, if applicable, the school district's or school's educational environment; and steps to be taken to prevent the recurrence of any discriminatory or harassing conduct. Implementation should be carried out by human resources officials or the responsible administrator, unless either party appeals. (Note that recipients may also employ the "clear and convincing" evidentiary standard, if that is the standard used in the school district or school for comparable proceedings related to other forms of discrimination.)

A party not satisfied with the resolution may submit a written appeal to the appropriate administrator. The complainant should then follow the Title IX procedures and timelines as established for the affected district or school.

If a party is not satisfied at any time, the party may file a complaint with the U.S. Department of Education, Office for Civil Rights.

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100
Email: OCR@ed.gov, fax: (202) 453-6012,
File a Complaint Form

How to File a Discrimination Complaint Regarding a Grievance Procedure with the Office for Civil Rights

Instructions and forms available are here.

Additional Resources

- The U.S. Department of Education's Title IX Regulation (34 C.F.R. Part 106)
- Title IX Final Rule
- Title IX: U.S. Department of Education Title IX Final Rule Overview
- Summary of Major Provisions of the Title IX Final Rule
- The U.S. Department of Education's Title IX Website
    - FAQs
    - Resources for Coordinators
- How to File a Discrimination Complaint Regarding a Grievance Procedure with the Office for Civil Rights, Instructions and forms available are here
- Civil Rights Protections Against Retaliation explains the key elements of retaliation, outlines how the Office for Civil Rights assesses retaliation claims, and provides examples that, depending on the facts and circumstances, could raise concerns of unlawful retaliation.
- Electronic Complaint System webpage at OCR@ed.gov.
- Frequently Asked Privacy-Related Questions About Filing a Complaint with OCR this resource provides helpful details about how information – including the identity of a complainant – will be used by OCR when OCR investigates a complaint. The resource also provides information on civil rights protections for individuals who submit a complaint of discrimination or participate in an investigation. Schools are encouraged to consult with district counsel for the latest information on compliance with updated federal requirements for Title IX.