

**DICKINSON WRIGHT**

**Elementary and Secondary School  
All Staff Title IX Training**  
(2024 Regulations)

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**Disclaimer**

- These training materials are informational in nature and should not be construed as legal advice and are not provided to address specific situations.
- Please consult with your legal counsel as necessary to address specific Title IX reports/complaints, and grievance situations and investigations.

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**Agenda**

1. The school's obligation to address sex discrimination in its education program or activity
2. The scope of conduct that constitutes sex discrimination under Title IX and its Regulations, including the definition of sex-based harassment
3. Title IX Grievance Procedures Brief Overview
4. Responsibilities for Staff—including all applicable notification and information requirements
5. Important Reminders

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**The school's obligation to address sex discrimination in its education program or activity**

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**Title IX Statute**

**"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."**

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**Title IX Regulations**

- Provide detailed grievance procedures for Title IX sex discrimination allegations, including but not limited to sex-based harassment, and are adopted by policy and grievance procedures.

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**2020 Regulations Under Prior Administration**

- In 2020, Title IX regulations were enacted, with detailed grievance procedures pertaining to sexual harassment.
- The final rule was published May 19, 2020 and went into effect August 14, 2020.

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**2024: New Regulations**

- In 2024, the regulations were amended and additional provisions added.
- The final rule was published in April of 2024 and with an effective date of August 1, 2024.

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**Title IX Team Members**

Position	Scope of Responsibility	Requirements
Title IX Coordinator	Many duties specified in regulations. Responsible for coordinating compliance with obligations under Title IX and its Regulations	May be the Investigator and Decisionmaker.
Investigator	Person who investigates and gathers evidence.	May be the Title IX Coordinator and Decisionmaker.
Decisionmaker	Person who evaluates relevant and not otherwise impermissible evidence and makes a determination whether sex discrimination occurred.	May be the Title IX Coordinator and the Investigator.

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Title IX Definitions

- **Complainant**
  - A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX of its Regulations;
  - or
  - A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX of its Regulations and who was participating or attempting to participate in the education program or activity at the time of the alleged sex discrimination.
- **Respondent**
  - A person who is alleged to have violated the prohibition on sex discrimination.
- **Recipient**
  - Any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

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Response to Sex Discrimination

- "A recipient with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively"
- "A recipient must also comply with [Section 106.44] to address sex discrimination in its education program or activity."
- Title IX Coordinator must monitor the recipient's education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination and take steps reasonably calculated to address such barriers.

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Education Program or Activity

- "this part applies to every recipient and to all sex discrimination occurring under a recipient's education program or activity in the United States."
- "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 the United States."
- "all the operations of"
- "conduct that occurs under a recipient's education program or activity includes but is not limited to . . . conduct that is subject to the recipient's disciplinary authority."

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Education Programs or Activities

- “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”
- “In the limited circumstances in which Title IX or this part permits different treatment or separation on the basis of sex, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm” (except as provided in certain circumstances)
- “Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex.”

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Recipient’s obligation to address sex discrimination in its education program or activity

- **Must adopt, publish, and implement a non-discrimination policy**  
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 its Regulations, including in admission (for certain entities) and employment.
- **Must adopt, publish, and implement grievance procedures**  
Grievance procedures must provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in the recipient’s education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited.
- **Must provide a notice of nondiscrimination**
  - To students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements.
  - Prominently include on website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to persons entitled to notice, or which are otherwise used in connection with the recruitment of students or employees.
- **Proper training and recordkeeping**
  - Promptly upon hiring or change of position that alters their duties under Title IX or its Regulations, and annually thereafter.

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Applicable notification and information requirements

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Notification Requirements

- An elementary school or secondary school **must** require all of its employees who are not confidential employees to **notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or its Regulations.**
  - (Does not apply to an employee who has personally been subject to conduct that reasonably may constitute sex discrimination)

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Confidential Employee Requirements

- An employee whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of the Title IX regulations, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies.
- An employee who has been designated as confidential 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.
- The educational entity must notify all participants in the education program or activity of how to contact confidential employees, if any.

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Confidential Employee Requirements (Cont.)

- A confidential employee must explain to any person who informs the confidential employee of conduct that reasonably may constitute sex discrimination under Title IX or its Regulations:
  - (1) The employee's status as confidential for purposes of the Title IX Regulations, including the circumstances in which the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination;
  - (2) How to contact the Title IX Coordinator and how to make a complaint of sex discrimination; and
  - (3) 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.

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## The scope of conduct that constitutes sex discrimination under Title IX and its Regulations

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### Scope

- 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—includes but is not limited to sex-based harassment.

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### Sex-Based Harassment

**"Sex-Based Harassment"** is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that is:

- Quid pro quo harassment
- Hostile environment harassment, or
- Specific offenses
  - Sexual assault
  - Dating violence
  - Domestic violence, or
  - Stalking

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**Quid Pro Quo Harassment**

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

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**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).

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 education program or activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles within the 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 education program or activity

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**Specific Offenses**

- Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
- Dating violence meaning 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

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**Specific Offenses (Cont.)**

- **Domestic violence** meaning 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; or
- **Stalking** meaning 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.

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**Recipient may continue to address conduct that does not meet the Title IX definition of sex-based harassment under other provisions of the recipient's own code of conduct.**

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**Title IX Grievance Procedures  
(Brief Overview)**

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Title IX Grievance Procedures

- Complaint
- Notice of allegations
- Dismissal review
- Investigation
- Evidence review
- Questioning of parties and witnesses by DecisionMaker to address credibility if in dispute and relevant
- Determination whether sex discrimination occurred
- Appeal of determination, if offered
- Also note:
  - No discipline until conclusion
  - Retaliation is prohibited
  - Informal resolution may be offered
  - Availability of supportive measures

Horizontal lines for notes

No discipline until conclusion of the grievance procedures

- May not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
- Comply with the grievance procedure, before the imposition of any disciplinary sanctions against a respondent.
- Administrative leave or emergency removal are still permitted in some instances.

Horizontal lines for notes

Retaliation

- 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 its Regulations, the recipient is obligated to comply with 106.44.
- Upon receiving a complaint alleging retaliation, a recipient must initiate its grievance procedures, or, as appropriate, an informal resolution process.
- Peer retaliation means retaliation by a student against another student.
- 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, for the purpose of interfering with any right or privilege secured by Title IX or its Regulations, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, including in an informal resolution process, in grievance procedures, and in any other actions taken by a recipient under § 106.44(f)(1). Nothing in this definition or this part precludes a recipient from requiring an employee or other person authorized by a recipient to provide aid, benefit, or services under the recipient's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under the Title IX Regulations.

Horizontal lines for notes

**Supportive Measures**

- **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 that party's access to the education program or activity, including measures that are designed to protect the safety of the parties or the educational environment; or
  - Provide support during the Title IX grievance procedures or during the Title IX informal resolution process.
- **Supportive measures may vary depending on what is reasonably available.**
- **May, as appropriate, modify or terminate supportive measures at the conclusion of the Title IX grievance procedures or at the conclusion of the informal resolution process, or may continue them beyond that point.**

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**Supportive Measures (Cont.)**

- **Must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity, or when an exception to prohibited disclosures of personally identifiable information applies.**
- **If the complainant or respondent is a student with a disability, the Title IX Coordinator must consult with one or more members, as appropriate, of the student's IEP team, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under 34 CFR 104.35(c), if any, to determine how to comply with the requirements of the IDEA and Section 504, in the implementation of supportive measures.**
- **For allegations of sex discrimination other than sex-based harassment or retaliation, the provision of supportive measures does not require the provision of an aid, benefit, or service to alter the alleged discriminatory conduct for the purpose of providing a supportive measure.**

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**Prohibited disclosures of personally identifiable information**

- **Must not disclose personally identifiable information obtained except in the following circumstances:**
  1. When the recipient has obtained prior written consent from a person with the legal right to consent to the disclosure;
  2. 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;
  3. To carry out the purposes of the Title IX Regulations, including action taken to address conduct that reasonably may constitute sex discrimination under Title IX in the education program or activity;
  4. 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
  5. To the extent such disclosures are not otherwise in conflict with Title IX or its Regulations, when required by State or local law or when permitted under FERPA

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## Responsibilities for Staff

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### Responsibilities for Staff

- **CALL THE TITLE IX COORDINATOR IMMEDIATELY**
- Report any information about conduct (or alleged conduct) that reasonably may constitute sex discrimination, including but not limited to sex-based harassment
- **DO NOT** start the investigation yourself
- **DO NOT** impose discipline for alleged sex discrimination, including but not limited to sex-based harassment, without ensuring that the Title IX process is followed or does not apply

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### Responsibilities for Staff

- If a report is made to you and you are unable to involve the Title IX Coordinator initially as details are given by the reporter, immediately pass on all information received from the reporter to the Title IX Coordinator.
- Be familiar with the Title IX definition of sex discrimination, including but not limited to sex-based harassment
- Be familiar with the scope of the educational program or activity

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**Responsibilities for Staff**

- Assist with supportive measures as requested
- Assist with any resolutions from informal resolution agreements as requested
- Assist with remedies as requested
- Keep parties and information confidential
- Direct students/parents to the Title IX policy and Title IX Coordinator when information is requested

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**Responsibilities for Staff (cont.)**

- Report all information about conduct that reasonably may constitute sex discrimination, including but not limited to sex-based harassment, to the Title IX Coordinator **EVEN IF the Complainant/reporter does not want you to** (unless you have been identified as a Confidential Employee under Title IX policy, in which case you have other requirements)
- Know that you may not be told whether a complaint is filed or what the final decision is after Title IX proceedings conclude—need to know basis

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**Responsibility to provide Title IX Coordinator contact and other information when informed of a student's pregnancy or related conditions**

- A recipient must ensure that 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, unless the employee reasonably believes that the Title IX Coordinator has been notified, the employee promptly provides that person with the Title IX Coordinator's contact information and informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the recipient's education program or activity.

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**In Sum:**

- Know that individuals have a right to an environment free from sex discrimination, including but not limited to sex-based harassment, under Title IX
- Understand sex discrimination, including but not limited to sex-based harassment, can include a wide range of conduct
- There is a mandatory reporting obligation for all employees (unless you have been identified as a Confidential Employee under Title IX, in which case you have other requirements)
  - Contact your Title IX Coordinator whenever you have information about conduct that reasonably may constitute sex discrimination or alleged sex discrimination, including sex-based harassment, or anything that you think may be sex discrimination or alleged sex discrimination, including but not limited to sex-based harassment
  - You are protected from retaliation for reporting
  - The Title IX Coordinator will review the information and determine next steps
- If you are notified of a student's pregnancy or related conditions, remember your obligations

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## Important Reminders Regarding Inappropriate Conduct

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**All Discrimination and Harassment is Prohibited**

- Beyond Title IX, discrimination and harassment based on *any* protected characteristic is strictly prohibited.
- Even a single incident can constitute harassment or create a hostile work environment if it is serious.
- Respect is the foundation of a positive work environment.

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How Can You Determine if Conduct is Discrimination or Harassment

- Your job is not to draw a legal conclusion.
- If conduct seems inappropriate, it probably is.
- Better to err on side of caution.
- If in doubt, treat as inappropriate, report, and have investigated by appropriate administrator
- Often the biggest mistake is to do nothing.

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What is Expected of Employees

- **Treat everyone with respect**
- No harassment of, or discrimination toward anyone! Follow policies.
- Report any harassment or discrimination immediately - whether directed at you or someone else.
- If an employee makes a complaint of harassment or discrimination you must not retaliate by changing job or pay, or continuing behavior.
- Set a good example for students.

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Other Important Reminders

1. Do not touch (or stand too close to) students or other staff members (this includes shoulders, thighs, lower back etc.).
2. Do not send emails, texts, IMs, chats, images etc. that are personal in nature or are not purely school-related.
3. Be careful regarding your use of compliments, it may make a student or another staff member uncomfortable.
3. Do not make jokes regarding protected characteristics.
4. Do not continue to engage in conduct that someone asks you not to do.

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Important Reminders (cont.)

- 5. Do not discuss sexual conduct with, or ask questions regarding sexual conduct of, other employees or students.
- 6. Do not make comments about other people's bodies or physical appearance.
- 7. Do not fish or probe coworkers for information. Keep workplace conversations work-related or to ordinary conversation such as current events, or family/hobbies/interests if disclosed by another employee.
- 8. Report inappropriate conduct to admins so that they are aware of the issue and can further investigate if necessary.

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Chelsea focuses her practice primarily in the areas of education and employment law. She provides legal services to community schools, management companies, community school sponsors, career-technical schools, and other educational institutions, on a variety of issues, including but not limited to:

- Title IX;
- Employee leaves of absence and accommodations;
- Discrimination, harassment, and retaliation allegations and investigations;
- Employment contracts;
- Civil litigation matters;
- School policies, procedures, and handbooks;
- State and Federal laws and regulations, and Ohio Department of Education and Workforce oversight;
- Public ethics and board governance;
- Student discipline;
- Special education; and
- Unemployment and workers' compensation.

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KEEP THESE TRAINING RECORDS FOR AT LEAST 7 YEARS

**Keep these training materials for at least 7 years and make them available upon request for inspection by members of the public.**

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