

Questions and Answers From Webinar Chat – 7/9

Western Educational Equity Assistance Center

We are not lawyers, and this should not be taken as legal advice. You can always consult your state or district's legal counsel for Title IX clarifications.

The US Department of Education has this cite you can submit questions to, I don't know how long the turn around is for responding to your questions.

OPEN@ed.gov

Here are our responses to the questions posted in the Chat July 9, 2020

Q1) Is gender also covered in addition to sexual orientation? Covered in the training as well as a protected identification that can result in a Title IX complaint

Answer: Aside from Sexual Harassment, you might be interested in this website from the USDOE/OCR <https://www2.ed.gov/about/offices/list/ocr/lgbt.html>

It does have this specific language: Title IX protects all students, including LGBTQ students, from sex discrimination. Title IX encompasses discrimination based on a student's failure to conform to stereotyped notions of masculinity and femininity.

Article: Secretary DeVos is failing to protect LGBTQ---

<https://www.americanprogress.org/issues/lgbtq-rights/reports/2019/07/29/472636/secretary-devos-failing-protect-civil-rights-lgbtq-students/>

Q2) If one of the parties moves to a new school district, what does the original school do?

Answer: Our understanding is that parties have to be present or the complaint is dismissed.

Q3) Do the Policy and Grievance need to be available in the languages of the community?

Answer: If you have a large, say for example, Spanish speaking population you would want to make your information available in that language. Another thing to keep in mind is the language you use in student handbook, use the KISS principal and not the legalese.

To the extent that it is feasible, the district needs to accommodate the needs of the families in the community it serves, but in cases where there are a 100 languages present, translation of documents is not practical. Many districts accommodate multiple languages with translators.

Q4) Is there specific guidelines to what type of training (e.g, video, handouts, etc.) required time of training (e.g. minimum hours) etc.

Answer: There are no specific videos or handouts that we are aware of. However ATIXA (the Association of Title IX Administrators) is an organization that has produced a lot of current information regarding the new regulations. They offer trainings on Title IX, Title IX Investigations.... Many, many more.

There are no specific requirements for time, but there are so many details to cover and so many stakeholder groups involved that these are going to have to be tailored to meet individual needs. TIXCs, Investigators, Deciders and Arbitrators need more specific training than do school staff, parents, volunteers, vendors and students.

Q5) I was reading the regs as saying that the formal complaint needed to be signed by either the complainant OR the Title IX Coordinator, not that the Title IX Coordinator had to sign every complaint - can you direct me to where that is in the regs?

Answer: On page 30574 of the Federal Register, it states the following:
“*Formal complaint* means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under § 106.8(a), and by any additional method designated by the recipient. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under § 106.45, and must comply with the requirements of this part, including § 106.45(b)(1)(iii).

Q6) Would the State Title IX Coordinator be the individual working for the Department of Education for your state?

Answer: Yes, each state and school district are required to assign and identify a Title IX Coordinator. Some have full time people in this position.

Q7) Our understanding is that we use the definitions from the CLERY act, but that K-12 does not have to comply with the requirements of the CLERY act. Am I mistaken?

Answer: Our understanding is that the requirement for the definitions are clear—and that not all of Clery applies to K-12 settings.

Here are the definitions used in the Federal Register, page 30574:

“*Sexual harassment* means conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the recipient conditioning the provision of an aid, benefit, or

service of the recipient on an individual's participation in unwelcome sexual conduct; (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30). "

Q8) Do you have a recommended policy that we can use to get started?

Answer: We don't have any examples of current policies under the new regulations. The checklists will outline what needs to be in your policy would be a good place to start. Perhaps looking at your current policy and seeing where you need to make the changes and additions.

The law is so new that no policies that meet our criteria are available yet. Updating your current policy is the most practical way to go given the unusual constraints resulting from the COVID-19 Pandemic and the August 14, 2020 deadline. At the very least, you want to show some interim progress with regard to updating the policies and get this on the Board calendar ASAP.