

Public School Employees' Responsibilities Under Title IX

Module 2

Employees with Additional Title IX Responsibilities

OSPI's Equity and Civil Rights Office
August 1, 2024



Module Summary and Instructions

Purpose: To assist Washington Local Education Agencies (LEAs) in meeting updated employee training requirements under the 2024 Title IX Final Rules, which go into effect on August 1, 2024.

Audience: LEA employees who: (1) serve as a Title IX investigator or decisionmaker; (2) are responsible for implementing the LEA's Title IX grievance procedures; or (3) have the authority to modify or terminate supportive measures.

Training requirement: This training must include:

- 1) The information included in Training Module 1 (all employees).
- 2) The LEA's obligations to respond to potential sex discrimination under 34 C.F.R. §106.44.
- 3) The LEA's Title IX grievance procedures under 34 C.F.R. §106.45.
- 4) How to serve impartially, avoid prejudgment of any facts at issue, conflicts of interest, and bias; and
- 5) The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of their relevance under 34 C.F.R. §106.45.

Time needed for training: Approximately 60 minutes.

Frequency of training: These employees must be trained promptly upon hiring or change of position that alters their duties under Title IX, and annually thereafter.

Legal Authority: 34 C.F.R. §106.8(d)(2)



Intended Audience

This module is for employees who:	Serve as Title IX investigators or decisionmakers
	Are responsible for implementing Title IX grievance procedures
	Have the authority to modify or terminate supportive measures

34 C.F.R. §106.8(d)(2)

Topics Covered

Employees' Title IX Responsibilities

Responding to Possible Discrimination

Resolving Title IX Complaints



34 C.F.R. §106.8(d)(2)





Employees' Title IX Responsibilities



Topics Covered

Key Terms and Definitions

Employees' Title IX Obligations



Employees' Title IX Responsibilities: *Key Terms and Definitions*



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..."*

20 U.S.C. §1681



Sex Discrimination

The **unfair or unequal treatment or harassment** of a person or group based on **sex**:

- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Sexual orientation
- Gender identity



Sex Stereotypes & Sex Characteristics

Sex Stereotypes

- Targeting a student because they don't conform to traditional ideas of how members of their sex should act, look, dress, or behave.

Sex Characteristics

- Targeting a student because of a physiological trait usually associated with male or female bodies.



Pregnancy Or Related Conditions

Pregnancy

- Targeting a student because they are, have been, or could be **experiencing pregnancy, childbirth, termination of pregnancy, or lactation.**

Related Conditions

- Targeting a student because they are **experiencing or recovering from a medical condition** related to pregnancy, childbirth, termination of pregnancy, or lactation



Sexual Orientation & Gender Identity

Sexual Orientation

- Targeting a student because of **who they are romantically, physically, or sexually attracted to**, whether gay, straight, bisexual, etc.

Gender Identity

- Targeting someone because of their **inherent sense of their own gender**, whether transgender, cisgender, nonbinary, etc.



Sex-Based Harassment

Harassing conduct or communication that (1) is based on sex *and* (2) fits one of three definitions:

1. Quid pro quo harassment;
2. **Hostile environment harassment**; *or*
3. One of four specific offenses.



1. Quid Pro Quo Sex-Based Harassment

Occurs when employee, agent, or other person with similar authority conditions an educational benefit, aid, or service upon a person's participation in unwelcome sexual conduct.

For example:

- *A teacher offering a student a good grade in exchange for a sexual relationship.*
- *A coach promising a player more game time if the player provides sexually explicit pictures.*



2. Hostile Environment Sex-Based Harassment

Hostile Environment Sex-Based Harassment: Conduct or communication that is:

- 1) Unwelcome,
- 2) Sex-based,
- 3) Both subjectively and objectively offensive, *and*
- 4) Creates a “**hostile environment.**”

34 C.F.R. §106.2



Unwelcome Sex-Based Conduct Can Include:

Rumors, slurs,
& pejoratives

“Jokes,”
whistling, &
catcalling

Sexting,
memes, &
videos

Threats,
intimidation,
& violence

Rape &
forcible sexual
contact



Subjectively and Objectively Offensive

The conduct must be perceived as offensive not only by the student experiencing it but also by a reasonable person in the targeted student's position.



Creating a Hostile Environment



The harassment is so **severe or pervasive** that it limits or denies a student's ability to participate in or benefit from the school's education program or activity.



Signs That A Student May Be Experiencing a Hostile Environment Can Include:

- A sudden lack of interest in school or in a preferred extracurricular activity
- Deteriorating mental or physical health
- Increased absences or school refusal
- More frequent discipline referrals or behavior issues
- Slipping grades
- A desire to avoid certain people or places at school
- Etc.



3. Specific Offense Sex-Based Harassment

Sexual
Assault

Dating
Violence

Domestic
Violence

Stalking



Employees' Title IX Responsibilities



Every single employee has an obligation to help their LEA comply with Title IX.



Some employees may also be asked to take on **additional Title IX responsibilities.**



Employees' Title IX Obligations

Once on notice, employees must take steps to **prevent and address possible sex discrimination** that happens in any school program or activity.

34 C.F.R. §106.44



For Employees, Preventing and Addressing Sex Discrimination Includes:

- **Recognizing the type of conduct** that could be sex discrimination or sex-based harassment.
- **Responding promptly and effectively** once on notice of possible sex discrimination;
- **Supporting students** who are involved in or impacted by the conduct.

**Some employees (i.e., those with additional Title IX responsibilities) may also have an obligation to help resolve complaints promptly and equitably.*



“On Notice”

A LEA is on notice when **any employee knows or should have known** about possible sex discrimination, including sex-based harassment

For example:

- A teacher receives a complaint
- A student or family contacts the school’s soccer coach with their concerns
- A bus driver witnesses harassing conduct or hears about it in the media
- A custodian finds sexist graffiti in a school locker room
- A paraeducator overhears homophobic slurs being openly exchanged between students in the classroom
- Harassment is happening during activities under staff supervision (e.g., recess, lunch, hallway, etc.)
- The harasser is an employee or volunteer



Notify the Title IX Coordinator

Once on notice of possible sex discrimination, an employee must **promptly notify their LEA's Title IX Coordinator.**



34 C.F.R. §106.44(c)



Support & Protect Students

Employees may also be asked to take steps to **support and protect** students involved in an incident.

For example, an employee may be asked to:

- Escort a student between classes;
- Provide extra supervision in the hallways or on a school bus;
- Revise a classroom seating chart to make sure the parties are separated;
- Extend a deadline or reschedule a test; or
- Offer counseling to a student.



Support & Protect Pregnant Students

Once **any** employee has been told about a student's pregnancy or related condition, the employee must:

1. Give the student the Title IX Coordinator's contact information; and
2. Explain how the Title IX Coordinator can help prevent sex discrimination and ensure the student's equal access.

34 C.F.R. §106.40)(b)(2)

Key Takeaways

1. Title IX prohibits sex discrimination in any public school program or activity.
2. The definition of “sex” now explicitly includes sex stereotypes, sex characteristics, pregnancy/related conditions, sexual orientation, and gender identity.
3. Once on notice of possible sex discrimination, employees must take steps to respond promptly and effectively, which includes:
 - a. Notifying the Title IX Coordinator
 - b. Supporting and protecting students





Responding to Possible Sex Discrimination



A Paramount Duty To Respond

Once on notice of possible sex discrimination, an LEA is required to respond promptly and effectively by:

- Stopping the conduct;
- Preventing its recurrence, and
- Remedying its effects.

34 C.F.R. §106.44(f)



Key Elements of an LEA's Response

Training Employees

Coordinating
Supportive
Measures

Ensuring Individual
and School Safety

Preventing
Retaliation

Informing the
Parties

Implementing
Appropriate
Procedures



Training Employees

LEAs must ensure that all **employees understand their responsibilities under Title IX.**



Coordinating Supportive Measures

Supportive measures must be offered and provided to the parties in order to:

- Restore/preserve their access to school programs/activities
- Protect their safety;
- Support them during the complaint resolution process.

Supportive measures are:

- Free
- Non-disciplinary
- Non-punitive
- Individualized
- Appropriate
- Confidential



When must supportive measures be offered?

Complainant

- **Always**, regardless of whether a formal complaint has been filed or an informal resolution process has been offered.


Respondent

- **Only when Title IX dispute resolution procedures have been initiated** (*i.e.*, when a formal complaint has been filed or an informal resolution process has been offered).



What are some examples of supportive measures?



- Access to counseling (or referral to outside community services)
- Extensions or rescheduling of course-related deadlines
- Schedule or attendance modifications
- Mutual no-contact agreements
- Safety escort
- Increased security and monitoring of certain areas on campus 

Can changes be made to a supportive measure?

Yes. Parties must be allowed to ask the LEA to change (or reverse) its decision to provide, deny, change, or stop providing a supportive measure.

Supportive measures can also be changed (or stopped) at the conclusion of the formal grievance procedure or informal resolution process.

These requests must be decided by an **impartial employee** with the authority to change or overturn the LEA's initial decision.



Ensuring Individual and School Safety

In addition to providing supportive measures, includes:

- Determining whether removing the respondent on an emergency basis is necessary.
- Protecting personally identifiable information throughout the process.
- Protecting the rights of students with disabilities.



Are emergency removals permitted?

Yes. Removing the respondent on an emergency basis is permitted, as long as the LEA:

- Conducts an individualized safety and risk analysis;
- Determines that an imminent and serious threat to the health and safety of the complainant or anyone else justifies the removal; and
- Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.



How does an LEA protect student privacy?

The LEA should keep all personally identifiable information obtained during the Title IX process confidential unless an **exception** applies.

1. Proper written consent was obtained prior to making the disclosure.
2. The disclosure is made to someone with the legal right to receive it.
3. The disclosure is necessary if the LEA is to properly address sex discrimination.
4. The disclosure is required by federal law.
5. The disclosure is required by state or local law and does not conflict with Title IX or FERPA.



What if the complainant or respondent is a student with a disability?



Ensure that **a member of the student's IEP/Section 504 team is consulted** throughout the Title IX process, so that the student's rights under the IDEA, Section 504, and the ADA are protected.



Preventing Retaliation

Ensure that the parties understand **how to recognize and report possible retaliation.**

Retaliation is defined as intimidating, threatening, coercing, or discriminating against someone:

- For purposes of interfering with a right they have under Title IX;
- Because they made a Title IX complaint; or
- Because they participated in a Title IX investigation, the informal resolution process, or the formal grievance procedures.



Informing the Parties

Once the Title IX Coordinator becomes aware of possible sex discrimination, they must **inform the complainant about the grievance procedures and informal resolution process** (if appropriate).



Implementing Appropriate Dispute Resolution Processes

The Title IX Coordinator must decide whether LEA's **formal or informal Title IX dispute resolution process** should be initiated in response to the incident.





Resolving Title IX Complaints



Title IX Complaints Can Be Resolved Via:

Formal Grievance Procedure

- Required under Title IX.
- Must be **in writing** and include all requirements outlined in 34 C.F.R. §106.45.
- Must be published.

Informal Resolution Process

- **Not** required under Title IX.
- If offered, must comply with 34 C.F.R. 106.44(k).
- Cannot be offered in certain circumstances.



Formal Grievance Procedure

General Principles



General Principles

Treat parties
equitably

Serve impartially

Follow established
timelines

Follow the rules
for evaluating
evidence

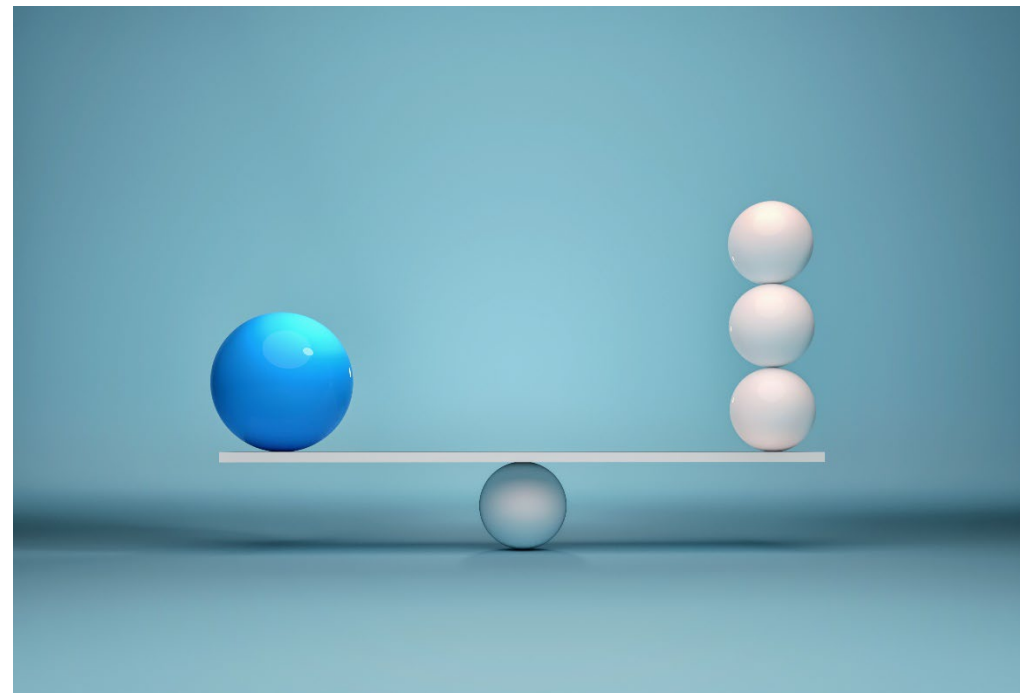
Assess whether
another procedure
could also apply

34 C.F.R. §106.45(b)

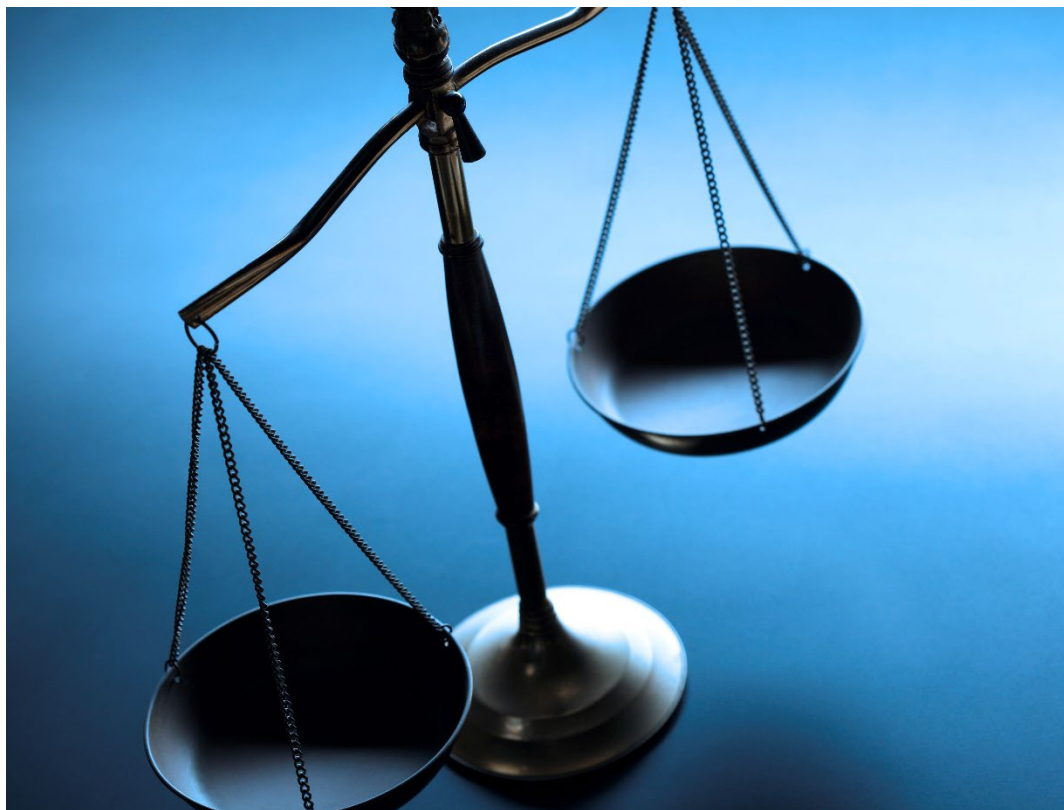


Treat the Parties Equitably

Ensure that the overall process is fair and unbiased, while also **considering the unique needs, priorities, and experiences** of the complainant and respondent.



Serve Impartially



Carry out your role **fairly and neutrally**, *i.e.*, avoid any prejudgment, conflicts of interest, and bias.

This includes **presuming the respondent is not responsible** for the alleged conduct until a determination is made at the end of the process.



Follow Established Timelines

Adhering to the timelines included in your LEA's policy and procedure.

Notifying the parties promptly if an **extension for good cause** is needed.

**Consider aligning these with your existing discrimination complaint procedure.*



Follow the Rules for Evaluating Evidence

Objectively
evaluate
“relevant”
evidence

Exclude
“impermissible”
evidence

Make unbiased
credibility
determinations

Take reasonable
steps to protect
privacy



What is relevant evidence?

Relevant evidence:

- Is related to the allegations being investigated, and
- Could help a decisionmaker determine whether the alleged conduct occurred.



34 C.F.R. §§106.2 & 106.45(b)(6)

What is impermissible evidence?

Impermissible evidence is:

- Protected by a privilege under state or federal law;
- Records made or maintained by certain medical professionals in connection with a party's or witness's treatment; and
- Relating to a complainant's sexual interests or prior sexual conduct.

Unless an exception* applies, any impermissible evidence must be excluded, regardless of its relevance.

**A full list of exceptions is found in 34 C.F.R. §106.45(b)(7).*



What is an unbiased credibility determination?

An unbiased credibility determination is one that is **based on factors other than a person's status** as a complainant, respondent, or witness.



Protect Participants' Privacy



Take reasonable steps to protect the privacy of the parties and witnesses, as long as those steps do not restrict their ability to:

- Obtain and present evidence;
- Consult with family members or confidential advisors; or
- Otherwise prepare to participate in the grievance procedure.



Assess Whether Another Procedure Could Also Apply

Determine **whether another procedure could also apply**, and if so, make sure the parties are kept informed.



Formal Grievance Procedure

The Six Stages



The formal grievance procedure has six stages.



Stage 1: Complaint



Determine whether the LEA has received a **complaint** about an incident of possible sex discrimination **from someone with the right to make a complaint.**



Defining A “Complaint”

A **verbal or written communication** that can objectively be understood as a **request for the LEA to investigate and make a determination about possible sex discrimination**, including sex-based harassment.



Who has the right to make a Title IX complaint?*

A Complainant

- A student or employee who alleges they have experienced possible sex discrimination or sex-based harassment, or anyone else who alleges the above occurred while they were participating or attempting to participate in a school program or activity

A Complainant's Parent/Guardian

- Includes anyone else with the legal right to act on behalf of a complainant

The Title IX Coordinator

- Can only initiate grievance procedures in a limited set of circumstances.

Note that under Washington law, these same restrictions do not apply. Instead, **anyone has the right to file a discrimination complaint.*



Defining The “Parties”

Complainant

- **A student or employee** who is alleged to have experienced sex discrimination under Title IX
- **A person other than a student or employee** who is alleged to have experienced sex discrimination and who was participating or attempting to participate in the school’s program or activity

Respondent

- **A person** who is alleged to have violated the LEA’s prohibition on sex discrimination.
- *Exception: When a discrimination complaint alleges an LEA’s policy or practice discriminates on the basis of sex, the LEA is not considered a “respondent.”*



Stage 2: Notice



Inform the parties that **a complaint of sex discrimination has been received**, what was alleged, and what happens next.



Notice Must Include:

1. A copy of the LEA's grievance procedures;
2. Enough information available at the time to allow the parties to respond to the allegations;
 - a. *If known, include the parties' identities, the conduct alleged to be sex discrimination, and the date(s) and location(s) of the alleged incident(s).*
3. A statement that retaliation is prohibited; and
4. A statement that the parties are entitled to an equal opportunity to access the relevant (but not otherwise impermissible) evidence or an accurate description of that evidence.



Stage 3: Evaluation



Determine whether to **dismiss, open, or consolidate** the complaint



Permissible Grounds for Dismissal

A complaint can be dismissed when:

1. The LEA cannot identify the respondent;
2. A respondent is not a student or participating in a school program or activity;
3. A complainant voluntarily withdraws any or all of their allegations, the Title IX Coordinator declines to initiate a complaint on their behalf, and the LEA determines that the conduct described in any remaining allegations would not meet the definition of sex discrimination, even if proven; **or**
4. The LEA determines the conduct alleged in the complaint would not meet the definition of sex discrimination, even if proven.



34 C.F.R. §106.45(d)(1)



Notification Requirements Upon Dismissal

Requirement	Complainant	Respondent
Notification required?	Always.	<i>Only if</i> the respondent has already been notified about the complaint.
Timing	Promptly after the decision to dismiss has been made.	<i>Either</i> promptly after notifying the complainant <i>or</i> simultaneously if notification is in writing.
Contents	<ul style="list-style-type: none"> Reason for the dismissal Right to appeal the dismissal and the grounds for such an appeal Offer of supportive measures 	<ul style="list-style-type: none"> Reason for the dismissal Complainant's right to appeal the dismissal and the grounds for such an appeal Offer of supportive measures



Grounds for Appealing a Dismissal

Complainants must be permitted to appeal the LEA's decision to dismiss their complaint if they believe the outcome would be changed by any of the following grounds:

Procedural
irregularity

New evidence

Conflict of
interest

34 C.F.R. §§ 106.45(d)(3) and 106.46(i)(1)



Process for Appealing a Dismissal

If the complainant appeals the decision to dismiss the complaint, the LEA must:

1. Notify the parties about the appeal.
2. Make sure a trained, neutral decisionmaker oversees the appeal.
3. Implement appeal procedures equally for both parties.
4. Give both parties a reasonable and equal opportunity to make a statement for or against the outcome; and
5. Notify both parties of the result of the appeal and the reasoning behind it.

34 C.F.R. §§ 106.45(d)(3)



Consolidation of Complaints

If allegations of sex discrimination **stem from the same facts or circumstances**, the LEA can consolidate them.

For example, the LEA could consolidate complaints:

- Against more than one respondent
- By more than one complainant against one or more respondents; or
- By one party against another party.
- Involving retaliation between the parties.

34 C.F.R. §§ 106.45(e)



Stage 4: Investigation



Conduct an
**adequate, reliable,
and impartial
investigation** into
each allegation.



During an Investigation, Make Sure To:

- **Collect enough evidence** to be able to determine whether sex discrimination occurred.
- **Evaluate the evidence objectively** to determine its relevance, impermissibility, and persuasiveness.
- **Assess and consider the credibility** of parties and witnesses.
- **Provide the parties with an equal opportunity** to present, access, and respond to relevant evidence and fact witnesses.
- **Take reasonable steps to protect the parties' unauthorized disclosure of information** and evidence obtained during the grievance procedures.



Stage 5: Determination



Determine whether sex discrimination occurred, notify the parties, and tell them how to appeal.



Preponderance of the Evidence

Title IX investigations should draw conclusions based on a **preponderance of the evidence.**



If Sex Discrimination *Did* Occur

Coordinate:	Appropriate remedies for the complainant (and others, if necessary);
	Appropriate disciplinary sanctions for the respondent, if necessary; and
	Any other steps needed to ensure that discrimination does not continue or recur.

34 C.F.R. §106.45(n), (s) 

Stage 6: Appeal



Offer the parties a **clear process for appealing** the LEA's determination.



Informal Resolution Process

Purpose and Key Elements



Informal Resolution Process

Instead of resolving a complaint through the formal grievance procedures, an LEA can offer an **informal resolution process** to the parties.



Purpose of Informal Resolution

The purpose of informal resolution is to provide the parties **an opportunity to resolve the allegations** and reach a mutually-acceptable resolution **without investigative findings.**



34 C.F.R. §106.44(k)

Informal Resolution Process

Key Elements to Consider Before Starting the Process



Before Starting The Process, Verify That:

Informal
resolution
is
permitted

The parties
have
provided
voluntary
consent

The parties
have been
given
required
notice

Facilitators
are
adequately
trained



Informal Resolution Is:

Appropriate

Any time an LEA:

- **Becomes aware of possible sex discrimination**, even if no complaint has been made; or
- **Receives a complaint of sex discrimination**, as long as a final determination has not been reached.

Prohibited

Any time:

- **A complaint includes allegations that an employee engaged in sex-based harassment of a student**; and
- **Informal resolution is prohibited** by federal, state, or local law.



Obtain Voluntary Consent

The parties must each provide **voluntary consent** before the informal resolution process can be started.

Such consent **cannot require the parties to waive their right** to a formal investigation or determination.



Provide Notice

Notice to the parties must explain:

- The allegations;
- The requirements of the informal resolution process;
- The impact and effect of using informal resolution;
- The potential terms that can be included in a resolution agreement; and
- The information the LEA will keep and its potential for disclosure if the parties were to initiate or resume grievance procedures



Ensure Facilitators are Trained

Facilitators:

- Cannot be a complaint investigator or decisionmaker;
- Must serve impartially;
- Must receive appropriate training; and
- May be required to implement other steps to ensure sex discrimination does not continue or recur.



What other training do facilitators need?

Every facilitator's training needs will be different, depending on their prior experience.

However, **all facilitators need to understand the specific steps of their LEA's informal resolution process**, which should be outlined in their LEA's policies and procedures.



Informal Resolution Process

During the Process



During The Process, Verify That:

Students are
being
adequately
supported and
protected

Required
timelines are
being met

Resolution
agreements
include
mutually-
acceptable
terms



Are students being supported and protected?

As discussed previously in this module, this includes:

Coordinating
supportive
measures for both
parties

Keeping information
confidential, unless
an exception applies

Protecting the rights
of students with
disabilities



Are required timelines being met?

LEAs must **follow the informal resolution process timelines** that are included in their policy and procedure.



What is a resolution agreement?

If the parties are able to reach a mutually-acceptable agreement during the informal resolution process, they can **document the terms of that agreement in writing**.

Resolution agreements:

- Are only binding on the parties, and
- Preclude the parties from initiating or resuming grievance procedures arising from the same allegations.



What terms can be included?

Potential terms that may be included in informal resolution agreements include, but are not limited to:

- Restricting contact between the parties;
- Restricting the respondent's ability to participate in school programs or activities or attend school events; or
- Any other restrictions the LEA *could* have imposed as disciplinary sanctions or remedies *if* the parties had pursued formal resolution *and* the LEA had made a determination that sex discrimination occurred.



Informal Resolution Process

After the Process Concludes



After The Process Concludes, Verify That:

Harassing or
discriminatory conduct
has stopped

Retaliation has been
prevented or addressed



Confirm The Conduct Has Stopped

Both during and after the informal resolution process, **prompt and effective steps must be taken to ensure that sex discrimination does not continue or recur** in any school program or activity.



Ensure Retaliation is Not Occurring

Make sure the parties understand **how to recognize and report possible retaliation.**

Retaliation is defined as intimidating, threatening, coercing, or discriminating against someone:

- For purposes of interfering with a right they have under Title IX;
- Because they made a Title IX complaint; or
- Because they participated in a Title IX investigation, the informal resolution process, or the formal grievance procedures.





Additional Resources



Additional Federal Resources

U.S. Department of Education's Office for Civil Rights (OCR)

- [Official Publication](#) of the 2024 Title IX Final Rule
- [Fact Sheet & Overview](#) of the 2024 Title IX Final Rule
- [Summary](#) of the Major Provisions of the 2024 Title IX Final Rule
- [Title IX Regulations: Pointers for Implementation](#)

More Title IX resources are available on OCR's [website](#).



Additional OSPI Resources

OSPI Resources

- Bulletin No. 046-24: [Guidance on the 2024 Title IX Rules & Responding to Sex-Based Discrimination in Washington's K-12 Schools](#) (July 5, 2024)
- Equity and Civil Rights website:
 - [Optional model nondiscrimination statement](#)
 - [Required handbook language](#)
 - [Compliance coordinator directory](#)



Additional Questions? Contact us.

OSPI's Equity and Civil Rights Office

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