

# Public School Employees' Responsibilities Under Title IX

## Module 3

*Employees who Facilitate the Informal Resolution Process*

OSPI's Equity and Civil Rights Office

August 1, 2024



# Module Summary and Instructions

**Purpose:** To assist Washington LEAs in meeting updated employee training requirements under Title IX, effective August 1, 2024.

**Required audience:** Any LEA employee who serves as a **facilitator** in the LEA's informal resolution process.

**Legal requirement:** This training must include:

- 1) The information included in the training module developed for all employees under 34 C.F.R. §106.8(d)(1);
- 2) The rules and practices associated with the LEA's informal resolution process; and
- 3) How to serve impartially by avoiding prejudgment of any facts at issue, conflicts of interest, and bias.

**Time needed for training:** Approximately 35 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)(3)



# Intended Audience and Topics Covered

This training module is designed for **employees who facilitate the informal resolution process**. It will cover the following topics:

Employees' Title IX Responsibilities

Resolving Title IX Complaints

Informal Resolution Process





# 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)



# Employees' Title IX Responsibilities:

## *Key Takeaways*



# 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





# Resolving Title IX Complaints



# Title IX Complaints Can Be Resolved Via:

## Formal Grievance Procedures

- 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.





# 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 they have experienced possible sex discrimination or sex-based harassment 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.



# 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.”*





# Informal Resolution Process



# 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)



# Key Elements

## Before starting the process:

- Understand when informal resolution can be offered (and when it is prohibited)
- Obtain consent from and provide notice to the parties
- Ensure that facilitators are qualified and trained

## During the process:

- Take steps to support and protect students
- Follow established timelines
- Understand the purpose, effect, and contents of a resolution agreement

## After the process concludes:

- Confirm that the alleged conduct has been stopped and is not recurring
- Ensure retaliation is not occurring



# Informal Resolution Process

*Before Starting the Process*





# 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 does “serving impartially” mean?*



Serving impartially means facilitators must carry out their duties **fairly and neutrally**, *i.e.*, avoiding any prejudgment, conflicts of interest, and bias.



# *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*



# Offer & Coordinate Supportive Measures

Supportive measures are **non-disciplinary, non-punitive, individualized, confidential, free services** offered to the parties in response to sex discrimination.

They are designed to:

- Restore or preserve access to the LEA's education program or activity without unreasonably burdening either party.
- Protect the safety of the parties and the school environment.
- Support the parties during the grievance procedures and informal resolution process.

34 C.F.R. §106.44(g)(2)



# *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, or 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.



# Protect Student Privacy

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.



# Protect Students with Disabilities



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.



# Follow Established Timelines

**Make sure that you are following the timelines** included in your LEA's policy and procedure.

*Don't forget to provide notice if an extension is needed!*



# Resolution Agreements

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*



# 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.



# Key Takeaways

- Title IX complaints can be resolved through informal resolution or formal grievance procedures.
- The LEA has the discretion to offer informal resolution in most situations.
- Facilitators must be trained and impartial, and they cannot have any involvement in the LEA's grievance procedures. As part of that training, the facilitator must understand:
  - Key elements that should be considered before, during, and after the informal resolution process; and
  - The specific steps of their LEA's informal resolution process, which should be outlined in the LEA's Title IX-related policies and 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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