



Waterville Central School District

Title IX Training

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OVERVIEW

- August 1, 2024 updated Regulations Take Effect*
- Modifies or adds to requirements to the 2020 amendments
- All recipients of Federal Funds Must Adopt, Publish & Implement**
 - A non-discrimination policy (106.8)
 - Publish a Notice of Non-Discrimination (106.8)
 - Grievance Procedures for Complaints of Sex Discrimination (106.45)

Notice of Nondiscrimination

- All Districts must have a Notice of Nondiscrimination with the following elements: (106.8(c)(1))
 - (A) A statement the District does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity it operates, as required by Title IX, including admission and employment.
 - (B) A statement that inquiries about the application of Title IX to the District may be referred to the District's Title IX Officer, the Office for Civil Rights or both.

Notice of Nondiscrimination

- (C) The name or title, office address, email address, and telephone number of the District's Title IX Coordinator
- (D) How to locate the District's nondiscrimination policy and the District's grievance procedures
- (E) How to report information about conduct that may constitute sex discrimination under Title IX and how to make a complaint of sex discrimination.

Publication of Notice of Nondiscrimination

- Districts are required to 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 or employment, and all unions and professional organizations holding collective bargaining or professional agreements with the District.
- Districts are required to prominently include all elements of its notice of nondiscrimination on its website and in each handbook, catalog, announcement, bulletin, and application form it makes available.

Publication of Notice of Nondiscrimination

- However, the regulations allow, if necessary, due to the format or size of any publication, the District may instead include in those publications the information covered in the following statement:
- *[District name] prohibits sex discrimination in any education program or activity that it operates. Individuals may report concerns or question to the Title IX Coordinator. The notice of nondiscrimination is located at [website address].*

(106.8(c)(2)).

Required Trainings

- Districts are required to ensure the following trainings (106.8(d)):
- All employees must be trained on,
 - District's obligation to address sex discrimination in its education program/activity
 - What is sex discrimination under Title IX (including sex-based harassment)
 - Information about reporting and grievance procedure.
- It is important to maintain records of this training being done for each employee

Required Trainings

- **Investigators, decision-makers and other persons who are responsible for implementing the District's grievance procedures or who can modify or terminate supportive measures** must additionally be trained in,
- The District required response to sex discrimination (106.44)
- The District's grievance procedures (106.45)
- How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest and bias
- Understanding the terms relevant in relation to questions and evidence and the what evidence is impermissible under the regulations

Required Trainings

- **Facilitator of informal resolution process**, in addition to the training requirements for all employees must be trained:
- On the rules and practices associated with the recipient's informal resolution process (106.44(k)) and how to serve impartially, including avoiding conflicts of interest and bias

Required Trainings

- Title IX Coordinator and designees, in addition to all trainings previously listed:
- Must be trained on their specific responsibilities under sections 106.8, 106.40 and 106.44
- Must be trained on the District's recordkeeping system and the recordkeeping requirements of 106.8(f)
- Any other training necessary to coordinate the District's compliance with Title IX

What is Considered the Educational Program

- Title IX requires Districts to address all sex discrimination occurring under its education program or activity.

The new regulations include in this:

- Conduct that occurs in any building owned or controlled by a student organization that is officially recognize by a postsecondary institution; and
- **Conduct that is subject to the recipient's disciplinary authority.**
- Also, requires an obligation to address sex-based hostile environment under its educational program/activity even if some conduct occurred outside the educational program/activity.

(106.11)

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.A. § 1681

Further defined “on the basis of sex”

- The new regulations now specifically include in sex discrimination, actions based on
- Sex Stereotypes
- Sex Characteristics
- Pregnancy or Related Conditions
- Sexual Orientation
- Gender Identity

Defining Sex Based Harassment

- The 2024 regulations specifically define (106.2),
- quid pro quo harassment,
- specific offenses including sexual assault, dating violence and stalking
- hostile environment harassment – This definition is modified in that the circumstances must be so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the education program or activity
- Previously the definition required it effectively denies a person equal access to the education program or activity

Pregnancy Related Conditions

- Requires recipients (districts) to take actions to prevent sex discrimination based on pregnancy or related conditions to ensure equal access, such as by providing reasonable modifications for students, reasonable break times for lactation for employees and lactation space for students and employees
- Prohibits schools from requiring documentation from students to obtain reasonable accommodations unless such documentation is necessary and reasonable

Responding to Sex Discrimination

- The amendments require once the District has knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity it must promptly and effectively respond (106.44(a)(1))
- This specifically includes a reporting requirement for non-confidential elementary and secondary employees (106.44(c))
- The regulations set forth an outline of the actions to be taken including the duties of the Title IX Coordinator (106.44(f))

Confidential Employees - Defined

- An employee whose communications are deemed confidential or privileged under federal or state law. But only when they are functioning within the scope of those duties
- Designated confidential by District for purposes of providing services to a person related to sex discrimination. But only during the time they are providing those services

Confidential Employee - Duties

- Requires confidential employee when informed by an individual of conduct that reasonably may constitute sex discrimination to explain to the individual:
 - The persons status as a confidential employee and the circumstances when not required to notify the Title IX Coordinator
 - How the individual may contact the Title IX Coordinator and make a complaint of sex discrimination, and
 - 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

Title IX Coordinator

- In addition to responding to and overseeing the complaint process the Title IX Coordinator has a duty to monitor the District'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

(106.44(b))

This requires the Title IX Coordinator to be proactive in monitoring the District's education program and activities to remove barriers based on sex discrimination

Title IX Coordinator

- This requires the Title IX Coordinator to be proactive in monitoring the District's education program and activities to remove barriers based on sex discrimination
- The regulations do not provide specific guidance on how the Title IX Coordinator should complete this monitoring duty

(106.44(b))

Title IX Coordinator

- There is a modification in that in the absence of a complaint or the withdrawal of any or all of the allegations in the complaint, and in the absence or termination of an informal resolution process, the Title IX Coordinator may initiate a complaint **only** if the conduct presents and imminent and serious threat to someone's health or safety or prevents the recipient from ensuring equal access based on sex to its education program or activity
- Must look at 8 factors

(106.44(f))

Retaliation Defined

- Retaliation is defined as 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 the regulations, or because the person has reported possible sex discrimination, made a sex-discrimination complaint, or participated or refuse to participate in any way in a recipient's Title IX process

Retaliation Defined

- 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 service under the recipient's educational program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part. (106.2).

Title IX Coordinator Requirements

- Responsible for coordinating the District's compliance with its obligations under Title IX.
- When notified of conduct that may constitute sex discrimination take actions to promptly and effectively end such discrimination and prevent its reoccurrence in the educational program/activity by,
 - (i) Treat the complainant and respondent equitably
 - (ii) Offer and coordinate supportive measures as appropriate
 - (iii) Notify the complainant or if unknown the person who reported of the grievance procedures and the informal resolution process if available and appropriate

(106.44(f)(1))

Title IX Coordinator Requirements

- (iv) In response to complaint initiate grievance procedures (106.45) and the informal resolution process if available and appropriate.*
- (v) In the absence of a complaint or withdrawal of allegations and absence of any informal resolution process – determine whether to initiate a complaint.
**
- (vi) If initiating a complaint, notify complainant and appropriately address reasonable safety concerns – includes providing supportive measures.

Title IX Coordinator Requirements

(vii) Regardless of whether a complaint is initiated – must take prompt, effective and appropriate steps to ensure sex discrimination does not continue or reoccur in the educational program or activity. *

** A Title IX Coordinator is not required to comply with (i)-(vii) of this section if the Title IX Coordinator reasonably determines the conduct as alleged could not constitute sex discrimination under Title IX. (106.44(f)(2)).

Title IX Coordinator – Initiating a Complaint

- If a complainant is unknown or withdraws the allegations and in the absence of or termination of the informal resolution process the Title IX Coordinator must make a fact-specific determination of whether or not to initiate a complaint.
(106.44(f)(1)(v))
- In making this fact-based determination the Title IX Coordinator must consider, *at a minimum, the following factors*,
 - (1) Complainant's request not to proceed
 - (2) Complainant's reasonable safety concerns regarding initiation of a complaint*
 - (3) The risk additional acts of sex discrimination would occur if not initiated

Title IX Coordinator – Initiating a Complaint

- Minimum factors to considered – Continued
- (4) The severity of the alleged sex discrimination, including whether it would require removal or other disciplinary action of respondent to prevent reoccurrence.
 - (5) The age and relationship of the parties, including whether respondent is an employee.
 - (6) The scope of the alleged discrimination, whether there is a suggested pattern or impacted multiple individuals

Title IX Coordinator – Initiating a Complaint

- Minimum factors to considered – Continued

(7) The availability of evidence to assist the decision maker in determining whether sex discrimination occurred.

(8) Whether the District could end the alleged sex discrimination and prevent reoccurs without initiating a complaint.

After considering these and other relevant factors the Title IX Coordinator determines the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or prevents the District from ensuring equal access on the basis of sex to its educational program/activity the Title IX Coordinator may initiate a complaint.

The Grievance Process

- Regulation 106.45 sets forth the required grievance process, which is generally divided into four (4) major stages
 - Evaluation
 - Investigation
 - Determination
 - Appeal

The Grievance Process - General

The grievance process specifically require or allow the following

- Treat complainants and respondents equitably
- Require no conflicts of interest by the Title IX Coordinator, investigator or decision maker
- The Title IX Coordinator or investigator can also be the decision maker
- A presumption the Respondent is not responsible for the alleged sex discrimination until the process is complete and determination is made
- Establish reasonably prompt timeframes for all major stages including reasonable extension for good cause

The Grievance Process - Evaluation

The grievance process specifically allow or require the following (cont.)

- Take reasonable steps to protect the privacy of the parties and witness
- Require an *objective evaluation* of all relevant evidence
- Exclude the following evidence even if deemed relevant,
 - Protected by privileged unless voluntarily waived
 - Physician, psychologist or other professional records unless voluntarily waived
 - Evidence related to complainant's prior sexual interests or conduct**

The Grievance Process - Evaluation

The grievance process specifically requires or allows (cont.)

- If there are alternative grievance procedures for certain complaints articulate clearly when the alternative procedures will apply**
- Provide required notice(s) of allegations to the parties involved
- Permit consolidation of claims in certain circumstances
- May dismiss the claim for certain allowed reasons
 - In such cases there must be an appeal process and consideration of supportive measures

The Grievance Process - Investigation

The grievance process specifically requires or allows (cont.)

- The burden is on the District to gather evidence and decide relevance or whether not permitted
- Must provide an equal opportunity for the parties to present fact witnesses and other relevant and permissible evidence
- Provide each party an equal opportunity to access the relevant and permissible evidence either by sharing the evidence or providing an accurate description of such
- Must provide the decision-maker an opportunity to question parties and witnesses to assess credibility

The Grievance Process - Determination

The grievance process specifically requires or allows (cont.)

- Following an investigation and evaluation of all relevant and permissible evidence determine whether sex discrimination occurred.
- Preponderance of the evidence standard is generally used**
- Provide written notification of determination and rationale for such
- Provide written notification of the procedures and permissible bases for an appeal
- If sex discrimination occurred, require Title IX Coordinator to implement remedies and to prevent reoccurrence

The Grievance Process - Appeals

The grievance process specifically requires or allows (cont.)

- Must offer an appeals process that is, at minimum, the same as it offers in all other comparable proceedings
- The decision-maker for the appeal must be trained consistent with Title IX regulations and did not take part in the investigation or original decision

The Grievance Process – Informal Resolution

The grievance process also allows for informal resolution under the following conditions,

- In lieu of resolving a complaint through the grievance procedures, the parties may elect to participate in an informal resolution process. (106.44(k))
- The facilitator for the informal resolution process must not be the same person as the investigator or the decision-maker in the District's grievance procedure. (106.44(k)(4))
- Informal resolution may not be used if there are allegations an employee engaged in sex-based harassment of an elementary or secondary school student or would otherwise conflict with the law

Supportive Measures

- Districts must offer and coordinate supportive measures as appropriate
- These may vary depending on what the District deems to be reasonably available, but may include, counseling, extensions of deadline or other course adjustments, increased security or monitoring, restrictions on contact, class changes or work modifications

(106.44(g))

Supportive Measures

- The District may, as appropriate, modify or terminate supportive measures at the conclusion of the grievance procedures or at the conclusion of the informal resolution process. (106.44(g)(3))
- The District must provide a complainant or respondent with a timely opportunity to appeal a decision to provide, deny, modify or terminate a supportive measure applicable to them
- The impartial employee must be someone other than the employee who made the initial decision

Supportive Measures

- If the complainant or the respondent is an elementary or secondary student with a disability, the Title IX Coordinator must consult with one or more member, as appropriate of the student's IEP team to determine how to comply with the requirements of IDEA in the implementation of supportive measures

Supportive Measures

- Must not unreasonably burden either party and must be designed to protect the safety of the parties, the District's educational environment/activity or to provide support through the grievance procedures
- They may not impose such measures for punitive or disciplinary reasons*
- For allegations of sex discrimination, *other than sex-based harassment or retaliation*, the provisions of supportive measures do not require the District to alter the alleged discriminatory conduct for the purpose of providing support** (106.44(g))

Interim Actions

- Emergency removal. Nothing in this part precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, ***determines that an imminent and serious threat to the health or safety*** of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- This does not modify IDEA, 504 or ADA requirements if applicable

(106.44(h))

Interim Actions

- Administrative leave. Nothing in this part precludes a recipient from placing an employee respondent on administrative leave from employment responsibilities during the pendency of the recipient's grievance procedures.

(106.44(i))

Disclosure of Personally Identifiable Information

- The regulations define the limited exceptions when personally identifiable information can be disclosed
- With written consent
- To a parent, guardian or legally authorized representative
- To carry out the purposes of this part, including action taken to address conduct that reasonably may constitute sex discrimination
- As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement
- To the extent such disclosures are not otherwise in conflict with Title IX or this part, when required by State or local law or when permitted under FERPA

Commencement of Investigation

- Prepare detailed list of questions designed to:
 - Elicit the facts
 - Prove or disprove the violation of a specific policy or law
 - Be open to the findings
 - Be prepared to drill down on vague answers
 - Cannot stick to a script, must be prepared to go where the answers take you

Commencement of Investigation

- Conduct interviews individually and in strategic order
 - Typically, complainant first, complainant's witnesses, then respondent, and respondent's witnesses
 - Don't be shy about recalling witnesses – doesn't leave loose ends and can be helpful with assessing credibility
- Get as much detail as possible to assess credibility
 - Use a timeline in complex cases spanning long timeframes
- Assure persons being interviewed that retaliation is prohibited
- Obtain written statements, when possible

Interviews

- First meet with **complainant** for a complete narrative of the facts
 - Who, what, where, when, why, how?
 - Who are other witnesses/others with knowledge?
 - What is the specific nature of the alleged misconduct?
 - How did this make you feel?
 - What result is desired?

Interviews

- Issues to explore with the **complainant**
 - How did you react to the incident?
 - Are there other students, teachers, staff that might have relevant information?
 - Do you have any notes, emails, tests, documents, pictures, videos, etc. related to the incident?
 - Review the responses to your questions with the complainant
 - Was this an isolated incident?

Interviews

▪ Witness Interviews

- A full investigation includes interviews with all potential witnesses, even if the first few witnesses have provided identical information
- Each witness should be interviewed separately
- Keep a timeline of investigation events, including interviews
- Witnesses who are reluctant to speak
 - Assure them they are not in trouble; confidentiality

Interviews

- **Witness Interviews (continued)**
 - Explain briefly the reasons for the interview
 - Start broad and work to the specific
 - “Are you aware of any misconduct by ...? If so, how? If not, what about toward complainant...?”
 - Ask whether witness has any relevant information
 - Describe the alleged perpetrator’s reported behavior toward the victim
 - What, if anything, did the victim tell you about the incident?
 - Do you know anyone else who might have relevant information?

Questioning Respondent

- Learn as much as you can about what happened before you conduct the interview
- Have collected evidence handy (pictures, video, emails, texts)
- Create a written list of questions
 - Start with general questions and become more specific as necessary
- Confront with contrary information
- Have a reliable and trustworthy witness/note taker

Interviews

- Interview the Respondent (accused)
 - Again, work from broad to specific
 - “Have you ever ...?”
 - Specify the allegations against them
 - Ask about the basic facts and give the Respondent the opportunity to explain
 - Ask them for evidence related to the incident (text, email, etc.)
 - Ask for any witnesses/other with knowledge

Remember

- Stay unbiased: your allegiance is to the facts
- Do not ignore “bad” facts
- Keep notes on issues that may stray from scope of current question so you can go back to them if warranted

Tips and Strategies

- Keep interview notes, and review them throughout the investigation; use them to guide the investigation
- Follow-up on inconsistencies and vague information
- Do not be afraid to re-interview witnesses, if required
- Visit the site of the incident
- View all of the evidence

Findings

- Evaluate all information gathered
- Assess credibility of witnesses
- Review documents
- Review relevant policies, regulations, practices, expectations, etc.
- Determine if there is a violation policies, regulations, practices, expectations, etc.

Writing the Investigation Report

- Introduction
 - Identify yourself (name and position)
 - How assigned, including whether applicable policy applies

Writing the Investigation Report

- Scope of Investigation
 - Describe nature of complaint including how the complaint came to the District
 - Procedural steps taken (e.g., placed employee on paid administrative leave)
 - List witnesses interviewed (name, title, date of interview, persons present)
 - List documents reviewed and evidence collected

Writing the Investigation Report

- Summary of Interviews
 - Describe all relevant statements made during interviews
 - Present in logical sequence
 - Be objective
 - Cite to specific evidence

Writing the Investigation Report

- Conclusion
 - Analyze the facts presented
 - Apply the correct standard
 - Include reasons for accepting or rejecting allegations
 - Use facts
 - Conclusions should be logical reflections of the facts

Finalizing Investigation

- Follow up periodically to ensure no retaliation
- Consider how to restore a comfortable working or learning environment
- Assess possible changes to create a more positive school culture and climate to prevent recurrence of the behavior
- Policy, regulation changes
- Training for employees



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