



New Mexico
Public Schools
Insurance Authority



POMS

**Title IX Coordinator
(TIXC)
AKA–The
Compliance Officer**

Learning Objectives

- **What is Title IX?**
 - Sexual Harassment
 - Standard of Evidence
 - Do we need a Team?
- **The Title IX Coordinator**
- **Recommended Responsibilities for the TIXC**
 - Upon Receipt of a Report
 - Supportive Measures
 - Timelines
- **FERPA**
- **Questions and References**

What is Title IX?

- Title IX is Federal Legislation that states: “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 financial assistance.”
- New Mexico Public Schools receive federal financial assistance; therefore, we are mandated to follow Title IX requirements.

THINGS TO KNOW ABOUT TITLE IX

- 1** It prohibits sex discrimination in education
- 2** Schools must have established procedures to help victims
- 3** It applies to both genders
- 4** Schools must be proactive to create a campus free of sexual discrimination

New Regulations as of Aug. 14, 2020 – Sexual Harassment

Definition of Sexual Harassment

Any of the following types of conduct, on the basis of sex, constitutes sexual harassment:

- A school employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct (often called "quid pro quo" harassment);
- 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 school's education program or activity; or
- Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a))

Standard of Evidence

The Standard of Evidence to be used in determining responsibility must already be in place and have received each district's School Board's approval.

- Under Title IX - The selection needs to be made between the Civil Standard, "preponderance of evidence" or the Criminal Standard, "clear and convincing evidence."
- The NMSBA Policy Services has selected the Civil Standard, "preponderance of the evidence", and uses this in its written Title IX policies.

Why Do We Need a Title IX Team?

The new Title IX “grievance process” will require at least 3 different positions:

- 1) Title IX Coordinator/Compliance Officer who must be an employee,
 - 2) Investigator, and
 - 3) Hearing Officer/Decision Maker
- All three positions must be free of any “conflict of interest” to all parties involved.
 - Larger districts might want to consider adding:
 - Deputy Coordinator(s),
 - School Based Representatives, and
 - Legal Advisor(s)
 - There also must be an Appeal Process available and in place.
 - These may include the Superintendent and the School Board – who must all be free of any “conflict of interest”.

Why do we need a Title IX Coordinator (TIXC)?

- The Title IX Coordinator (TIXC) is the recipient's/district's/school's designated Title IX compliance authority.
- By regulation, each funding recipient must designate a TIXC, whether that recipient is a district or a stand-alone school. There is no requirement that each school within a district have a TIXC, but some schools are so large, and some districts so dispersed, that it might make sense to use a deputy TIXC model per facility/site.

Presently, for some schools (that are even aware of their Title IX obligations), the TIXC is usually a figurehead of some kind in the central office who is responsible for Title IX in name only, with a school-based administrator in each facility performing investigation functions.

This informal and de-centralized model does not satisfy the requirements of the new Regulations and is unsustainable as a compliance mechanism.

The district must ensure that the TIXC is:

- 1) independent and cannot have any conflicts of interest,
- 2) has the authority to effectively coordinate compliance efforts and responsibilities under Title IX for all students, employees, and others in the school/district community.

OCR's 2015 Guidance regarding the Role of the Title IX Coordinator

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

Title IX Coordinator/Compliance Officer

- While the TIXC may have functioned as an investigator in the past, in the smallest or most resource-strapped environments, **this can no longer occur.**
- The new Title IX Regs clearly state that the TIXC cannot serve in an investigatory or decision-making capacity in a grievance or disciplinary process.
- The TIXC will conduct the preliminary inquiry (not the investigation) for all reported incidents.

Response to Reports

Upon receiving a report regarding sex discrimination or sexual harassment with or without a formal complaint, the Title IX Coordinator shall:

- Provide a response to the complainant (alleged victim) and the respondent (alleged perpetrator) of non-disciplinary, non-punitive individualized services, that are not unreasonably burdensome to either party, but are designed to ensure equal educational access and protect safety.
- These services shall be offered as appropriate, as reasonably available, and without fee or charge, which will provide supportive measures to both parties.
- Assess the need for a *Threat Assessment* based upon the information provided by the complainant and proceed accordingly.

The Title IX Coordinator is responsible for the implementation and tracking of supportive measures offered, refused, and utilized.

Supportive Measures

Upon the making of a report regarding sex discrimination or sexual harassment, the Title IX Coordinator shall promptly contact the complainant to:

- Discuss the availability of supportive measures as defined in §106.30.
- Consider the complainant's wishes with respect to supportive measures.
- Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
- Explain to the complainant the option and process for filing a formal complaint.

In some circumstances, these measures will contradict a student's IEP or 504 plan in ways that will likely require even more team meetings for students with disabilities involved in the new Title IX processes.

Supportive Measures Continued

Supportive measures provided to both the complainant and the respondent might include but are not limited to:

- Counseling,
- Extensions of deadlines or other course-related adjustments,
- Modifications of work or class schedules,
- Campus/school escort services,
- Mutual restrictions on contact between the parties,
- Changes in work or locations,
- Leaves of absence,
- Increased security and monitoring of certain areas of the campus, and
- Administrative leave while a grievance is pending,
- Emergency removal (following a Threat Assessment), and other similar measures.



District Title IX Coordinators

TIXCs should be focused on systemic and on-going policy, process, prevention and training programs

- Including assessing school climate and current program effectiveness;
- Collaborating and cooperating with school officials, parents/guardians, and community partners; and
- Ensuring that all staff members have the appropriate knowledge, skills, training, and resources necessary to successfully fulfill their responsibilities under Title IX.

Recommended Responsibilities for TIXCs

Include, but are not limited to:

- Providing annual and ongoing training and performance evaluation for School-Based Representatives, Investigators, Decision-Makers, Appeal Decision-Makers, Advisors, and Advocates for their Title IX-related responsibilities.
- Assuring that all staff is trained and understands the expectations placed upon them under Title IX.
- Coordinating regular review and revision of policy and procedures for preventing and responding to reports of alleged sex- and gender-based discrimination, misconduct, and retaliation.
- Working with appropriate offices/departments/schools to ensure program access and equity.
- Establishing an assessment schedule to review compliance efforts, school/district climate, and program effectiveness.
- Conducting the preliminary inquiry for all reported incidents.

Recommended Responsibilities for TIXCs (cont.)

- Tracking systemic or pattern incidents and taking remedial actions to prevent their recurrence.
- Providing an annual report to the school/district community including statistics, education and prevention efforts, and continuing practices.
- Providing regular updates to the Superintendent, School Board, Department of Education, etc.
- Maintaining complete records of all sex and gender-based discrimination, misconduct, and retaliation reports and the school's/district's response to each. Records must be maintained for a period of at least seven years.
- Overseeing communication protocols with respect to information shared with parties/witnesses/advisors and other participants in the resolution process.
- Facilitating regular communication with the Superintendent and the District's legal counsel, as appropriate.

Recommended Responsibilities for TIXCs (cont.)

- Working with public relations officials to facilitate responses to media and records requests in accordance with the Family Educational Rights and Privacy Act (FERPA) and organizational policy, if appropriate.
- Establishing memoranda of understanding (MOUs) for information sharing and service coordination with school/district law enforcement/security/School Resource Officers (SROs), local law enforcement agencies, local educational agencies/institutions, and community-based response agencies (e.g. child protective services, rape crisis centers, victim advocates, medical providers, mental health providers).
- Following appropriate notification timelines for parents/guardians for incidents involving minors.
- Integrating abuse of minor's protection programs/training/duties to align with Title IX programs.
- Developing and maintaining accurate web and print-based publications with information about non-discrimination statements, policy, process, and resources for applicants, employees, parents/guardians, students, third parties, witnesses, reporting/responding parties, as well as individuals looking to provide support for reporting or responding parties.

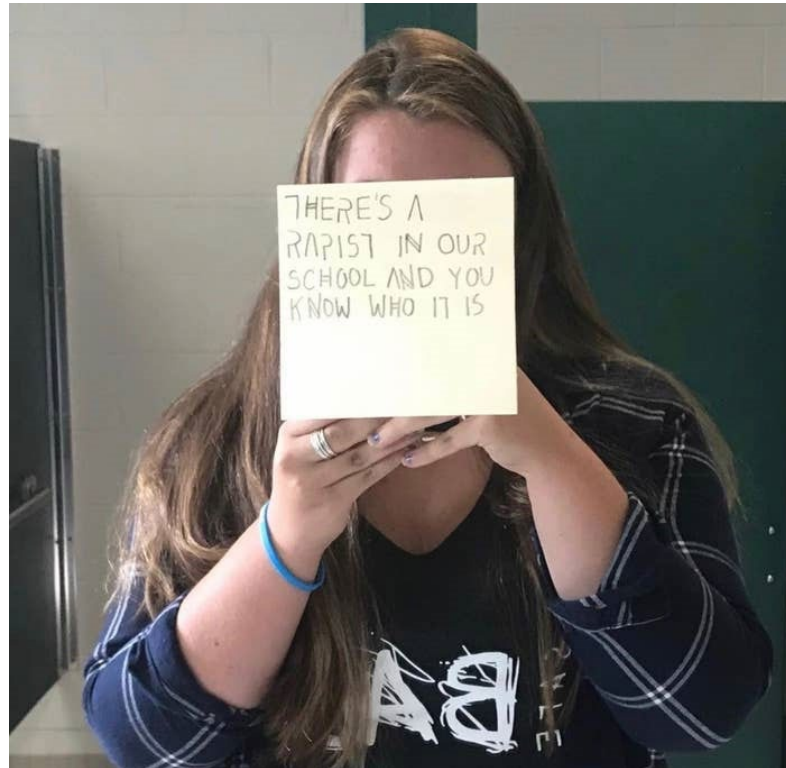
Recommended responsibilities for TIXCs (cont.)

- Recruiting and training school-based advisors for reporting and responding parties, if desired.
- Training or ensuring training of all mandated reporters/responsible employees and intake professionals.
- Training or ensuring appropriate training of all students and parents/guardians.
- Complying with the Title IX duty to stop, prevent, and remedy known sex/gender discrimination and retaliation.
- Assuring all deputy coordinators, investigators, decision-makers and any person who facilitates an informal resolution process receive training consistent with the extensive and specific requirements in the new Regs § 106.45 b(1)(iii).
- The TIXC also maintains records of any appeals and the results therefrom, any informal resolution, and all materials used to train coordinators, investigators, and decision-makers with regard to sexual harassment. The basis for any conclusions/decisions must be documented, as well as confirmation that the response was not clearly unreasonable, and that the school/district has taken measures designed to restore or preserve access to the educational program or activity.

Suspended for “Bullying”

Should this event have prompted a Title IX investigation?

In 2019, 15-year-old high school student in Maine was suspended for bullying after she placed a sticky note on a bathroom mirror at her school.



9 Things to Know about Title IX

Title IX protects **ALL** people regardless of their sex.

All Schools must have a Title IX Coordinator.

Schools must take **IMMEDIATE** action to ensure a victim can continue their education free of ongoing sexual discrimination, violence, or harassment.

Schools must have an established procedure for handling Sexual Misconduct.

If your school fails to comply by these rules file a complaint with the U.S. Department of Education.

Schools may not retaliate against a victim filing a complaint.

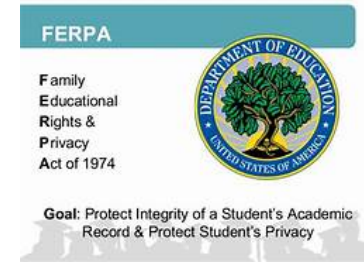
In cases of sexual violence, schools are prohibited from resolving complaints through mediation.

Costs necessary for a victim to pursue his/her education such as counseling or housing changes should be provided by the school.

Schools are required to protect pregnant and parenting students from discrimination.

FERPA - Family Educational Rights and Privacy Act

Just a reminder...



- The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.
- FERPA applies to Title IX investigations, and both the Complainant's and the Respondent's rights must be protected throughout the investigative process.

Questions?

- If you have any questions or need to discuss the role of the Title IX Coordinator in further detail, please don't hesitate to call or email.

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**SEXUAL
HARASSMENT.**

**KNOW WHERE
THE LINE IS.**

References

References for information contained in this presentation, as well as some additional resources for further information include:

- <https://atixa.org/r3/#regulations>
- <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- <https://www2.ed.gov/about/offices/list/ocr/letters/college-201504-title-ix-coordinators.pdf>
- <https://www.jdsupra.com/legalnews/u-s-department-of-education-new-title-78019/>
- <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-overview.pdf>

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