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k12  
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## Title IX Amendments (finally) Issued by the U.S. Department of Education on April 19, 2024

On April 19, 2024, the U.S. Department of Education issued its long-awaited amendments to the rules implementing Title IX: [U.S. Department of Education Releases Final Title IX Regulations, Providing Vital Protections Against Sex Discrimination | U.S. Department of Education](#). In addition to the rules, the DOE issued a fact sheet, analysis of changes, and sample policies.

The draft Title IX rules were issued by the DOE almost two years ago in June of 2022 for public comment. Consistent with standard practice, the DOE released 1520 pages of ‘comments and analysis’ with the final rules.

While not carrying the force and effect of law, the ‘comments and analysis’ section offers a fascinating look at the public discourse surrounding Title IX and gives insight into how the DOE and Office for Civil Rights will interpret various provisions contained in Title IX.

The amended Title IX rules consist of 57 pages and will go into effect on August 1, 2024. Following is a summary of the major changes affecting K-12 schools.





## Will board policies require any updates / revisions?

Yes. The amendments contain a number of substantive changes that will require updates to board policies. The August 1, 2024 effective date is not ideal in this respect since many boards of education do not meet during the month of July. If you are a member of the IASB PRESS service, you can await their proposed revisions before taking any action on board policy 2:265. A delay in implementing policy amendments until after August 1, 2024 for a short period of time (30 days give or take) is not likely to result in any adverse action. After the board policy is updated, you must communicate this to your students and their families.

## Can the Title IX investigator also be the decision-maker?

Yes. One of the most welcome changes to the rules is that the “decisionmaker may be the same person as the Title IX coordinator or investigator.” 34 CFR 106.45. However, the facilitator for an informal resolution (if any) may not be the same person as the investigator or the decision maker. 34 CFR 106.44.

## Do the amendments address student participation in athletics?

No. The DOE’s rulemaking process is still ongoing related to student participation in athletics. The DOE proposed extensive amendments to its athletics regulations in April 2023 and received over 150,000 public comments, which are still in the process of being reviewed.

## Can a Title IX complaint be oral? Or must it be made in writing?

In a departure from the 2020 rules, a Title IX complaint made on or after August 1, 2024, may be made orally or in writing and need not be signed by the complainant. School personnel must accept and treat an oral or written complaint as a Title IX complaint if it can be “objectively understood as a request to investigate.” 34 CFR 106.2.





## Definition of Parent/Guardian

The definition of parent/guardian was expanded in the amendments to include an individual acting 'in loco parentis' meaning in the place of a parent. 34 CFR 106.2.

## Individuals who may file a Title IX complaint

The new rules expand who may file a Title IX complaint to include anyone attempting to access K-12 programs or activities at the time the harassment or discrimination occurred. 34 CFR 106.2. Previously, only students and staff members could file a Title IX complaint. The rules also specifically expand the definition of school programs to include extracurricular activities, research, and occupational training. 34 CFR 106.31.

## Location of the incident giving rise to the complaint

School districts are responsible for addressing Title IX complaints "even when some conduct ... occurred outside the [school district's] education program or activity or outside the United States. 34 CFR 106.11. The clause 'some conduct' is intriguing and must mean that if ALL conduct associated with a complaint occurred off school grounds, then a Title IX investigation would not be warranted. However, if 'some conduct' carries over into the school setting, then Title IX protections are available (referred to as a 'nexus' analysis).

## Can a complainant file a complaint if they no longer attend the school district?

Yes. The new rules clarify that a complainant may file a complaint for an event that occurred when she was participating in or attempting to participate in the school district's educational program or activities. The previous rule was conditioned on whether this was true at the time the Title IX complaint was filed.





## Definition of harassment

Old definition (34 CFR 106.30): prohibits unwelcome sex-based conduct only if it is “so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”

New definition (34 CFR 106.2) prohibits unwelcome sex-based conduct that, “based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity. The new definition is much broader in scope and will almost certainly be litigated.

## Consultation with a student’s IEP or Section 504 team

The amended rules contain a new provision for K-12 institutions that requires the Title IX Coordinator to consult with members of a student’s IEP or Section 504 team to “determine how to comply with the requirements of [IDEA and/or Section 504] in the implementation of supportive measures.” 34 CFR 106.44. The change is likely designed to ensure that the Title IX Coordinator is making recommendations for supportive measures that are consistent with a student’s IEP or Section 504 Plan.

## Training requirements

The training requirements under the amended rules are significant and include training on Title IX implementation, avoiding bias, facilitating informal resolution of disputes, etc. There is also a new definition of a confidential employee (i.e., certificated staff members) who will require different training than non-confidential employees (i.e., support staff). The new rules stress that all school district employees must be trained regarding their responsibilities under Title IX and how to respond to complaints.





## Resources for School Personnel

[Title IX amended rules](#) (unofficial) issued on April 19, 2024 (DOE)

[Title IX fact sheet](#) (DOE)

[Brief Overview of Key Provisions](#) (DOE)

[Resource for Drafting Nondiscrimination Policies and Title IX Policies](#) (DOE)

[Title IX of the Amendments Act of 1972](#) (DOJ)



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### Oakbrook

2 TRANSAM PLAZA DR.  
SUITE 450  
OAKBROOK TERRACE, IL 60181

### Edwardsville

204 EVERGREEN LN.  
SUITE A  
GLEN CARBON, IL 62034

### St. Louis

7733 FORSYTH BLVD.  
11TH FLOOR  
CLAYTON, MO 63105

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