

Action	The Title IX Final Rule: Addressing Sexual Harassment in Schools
Notice to the School – Actual Knowledge	Title IX’s Final Rule requires K-12 schools to respond whenever any employee has notice of sexual harassment, including allegations of sexual harassment. In Florida, Teachers are professionally mandated reporters of abuse. Notice to a Title IX Coordinator, or to an official with authority to institute corrective measures on the recipient’s behalf, charges a school with actual knowledge and triggers the school’s response obligations.
Definition of Sexual Harassment for Title IX Purposes	<p>The Final Rule defines sexual harassment broadly to include any of three types of misconduct on the basis of sex: Any instance of <i>quid pro quo</i> harassment by a school’s employee; any unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access; any instance of sexual assault, dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).</p> <p>The Final Rule uses the Supreme Court’s <i>Davis</i> definition (severe and pervasive and objectively offensive conduct, effectively denying a person equal educational access) as one of the three categories of sexual harassment, so that where unwelcome sex-based conduct consists of speech or expressive conduct, schools balance Title IX enforcement with respect for free speech and academic freedom.</p>
Sexual Harassment Occurring in a School’s Education Program or Activity and in the United States.	Under the Final Rule, schools must respond when sexual harassment occurs in the school’s education program or activity. Title IX applies to all of a school’s education programs or activities whether the programs or activities occur on campus or off campus.
Reporting to the Title IX Coordinator(s)	The Final Rule expands a school’s obligations to ensure its students and staff know how to report to the Title IX Coordinator(s). Schools must prominently display on their websites the required contact information for the Title IX Coordinator(s). Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator(s), or by any other means that results in the Title IX Coordinator(s) receiving the person’s verbal or written report. A report may be made at any time to include non-business hours, by using the telephone numbers or e-mail addresses or by mail to the office of the Title IX Coordinator(s).
School’s Mandatory Response Obligation: The Deliberate Indifference Standard	<p>Schools must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is not clearly unreasonable in the light of the known circumstances. Schools have the following mandatory response obligations:</p> <p>Schools must offer supportive measures to the person alleged to be the victim (referred to as the complainant)</p>

	<p>The Title IX Coordinator(s) must immediately contact the complainant, confidentially to discuss the availability of supportive measures, consider the complainant’s wishes with respect to supportive measures, inform the complainant o the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.</p> <p>Schools must follow a grievance process that complies with the Final Rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent.</p> <p>Schools must not restrict rights protected under the U.S. Constitution, including the First Amendment, Firth Amendment and Fourteenth Amendment when complying with Title IX.</p> <p>Schools are required to investigate sexual harassment allegations in any formal complaint or signed by a Title IX Coordinator. The Final Rule establishes that a complainant’s wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator(s) determine that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.</p> <p>If the allegations in a formal complaint do not meet the definition of sexual harassment in the Final Rule, or did not occur in the school’s education program or activity against a person in the Unites States, the Final Rule clarifies that the school must dismiss such allegations <i>for purposes of Title IX</i> but may still address the allegations in any manner the school deems appropriate under the school’s own code of conduct.</p>
<p>Mandatory Response Obligations: Defining “Complainant” “Respondent” “Formal Complaint” “Supportive Measures”</p>	<p>The Final Rule defines “complainant” as an individual <i>who is alleged to be the victim</i> of conduct that could constitute sexual harassment. This clarifies that any third party as well as the complainant may report sexual harassment. Parents and Guardians do not become complainants (or respondents); The Final Rule recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing any formal complaints) in Title IX matters.</p> <p>The Final Rule defines “respondent” as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.</p> <p>The Final Rule defines “Formal Complaint” as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment and states:</p> <p>At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.</p> <p>A formal complaint may be files with the Title IX Coordinator in person, by mail, or by e-mail, by using the contact information required to be listed for the Title IX Coordinator under the Final Rule, and by any additional method designated by the school.</p>

	<p>The phrase “document filed by complainant” means a document or e-mail submission that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.</p> <p>Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process and must comply with the requirements for the Title IX personnel to be free from conflicts and bias.</p> <p>The Final Rules define “supportive measures” as individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.</p> <p>The Final Rule evaluates a school’s selection of supportive measures and remedies based on what is not clearly unreasonable in light of the known circumstances, and does not second guess a school’s disciplinary decisions, but requires the school to offer supportive measures, and to provide remedies to a complainant whenever a respondent is found responsible.</p>
Grievance Process Requirements	<p>The Final Rule prescribes a consistent, transparent grievance process for resolving formal complaints of sexual harassment. The grievance process required by the Final Rule applies to all schools equally including K-12 schools. The Final Rule states that a school’s grievance process must:</p> <p>Treat complainants equitably by providing remedies any time a respondent is found responsible and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process identified in the Final Rule.</p> <p>Remedies, which are required to be provided to a complainant when a respondent is found responsible, must be designed to maintain the complainant’s equal access to education and may include the same individualized services described in the Final Rule as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.</p> <p>Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person’s status as a complainant, respondent, or witness.</p> <p>Require Title IX personnel (Title IX Coordinators, investigators, decision-makers, people who facilitate any informal resolution process) to be free from conflicts of interest or bias for or against complainants or respondents.</p> <p>Training of Title IX personnel must include training on the definition of sexual harassment in the Final Rule, the scope of the school’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes as applicable and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.</p> <p>A school must ensure that decision-makers receive training on any technology to be used at a hearing.</p>

	<p>A school's decision-makers and investigators must receive training on relevance, including how to apply the rape shield protections provided only for complainants.</p> <p>Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.</p> <p>Recipients must post materials used to train Title IX personnel on their websites, if any, or make materials available for members of the public to inspect.</p> <p>Include responsibly prompt time frames for conclusion of the grievance process, including appeals and informal resolutions, with allowance for short-term, good cause delays or extensions of the time frames.</p> <p>Describe the range, or list, the possible remedies a school may provide a complainant and disciplinary sanctions a school might impose on a respondent, following determination of responsibility.</p> <p>State whether the school has chosen to use the preponderance of the evidence standard, or the clear and convincing evidence standard, for all formal complaints of sexual harassment (including where employees and faculty are respondents).</p> <p>Describe the school's appeal procedures and the range of supportive measures available to complainants and respondents.</p> <p>A school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.</p> <p>Any provisions, rules or practices other than those required by The Final Rule that a school adopts as part of its grievance process for handling formal complaints of sexual harassment, must apply equally to both parties of the complaint.</p>
Investigations	<p>The Final Rule states that the school must investigate the allegations in any formal complaint and send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint.</p> <p>During the grievance process and when investigating:</p> <ul style="list-style-type: none"> - The burden of investigating and the burden of proof must remain on the schools, not on the parties. - Schools must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence. - Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no "gag orders") - Parties must have the same opportunity to select and advisor of the party's choice who may be but need not be an attorney. - Schools must send written notice of any investigative interviews, meetings, or hearings. - Schools must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence. - Schools must send the parties, and their advisors, an investigative report that summarizes relevant evidence, in electronic format or hard copy, with at least 10 days to respond. - Schools must dismiss allegations of conduct that do not meet the Final Rule's definition of sexual harassment or did not occur in a school's education program or activity. Dismissal is only for Title IX purposes and does not prevent a school from addressing the conduct in any manner the school deems appropriate.

	<ul style="list-style-type: none"> - Schools may dismiss a formal complaint or allegations if the complainant informs the Title IX Coordinator in writing that the complainant seeks to withdraw the formal complaint or allegations; if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination. - Schools must give the parties written notice of the dismissal and the reasons for the dismissal. - Schools may consolidate formal complaints where the allegations arise out of the same facts. - The Final Rule protects the privacy of a party's medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the school obtains the party's voluntary, written consent to do so. -
Hearings	The Final Rule states that hearings are optional for K-12 schools.
Written Questions K-12	With or without a hearing, after the school has sent the investigative report to the parties and before reaching a determination of responsibility, the decision-maker(s) must provide each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers and allow for additional limited follow-up questions from each party.
Rape Shield Protection for Complainants	The Final Rule provides rape shield protections for complainants (as to all recipients, K-12 schools or others) deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.
Standard of Evidence and Written Determination	<p>The Final Rule requires the school's grievance process to state whether the standard of evidence to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard. The Final Rule makes each school's grievance process consistent by requiring each school to apply the same standard of evidence for all formal complaints of sexual harassment whether the respondent is a student, employee or faculty member.</p> <p>The decision-maker cannot be the same person as the Title IX Coordinator or the investigator; must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.</p> <p>The written determination must be sent simultaneously to the parties along with information about how to file an appeal.</p>
Appeals	The Final Rule states that a school must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations on the following basis: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome, and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.
Informal Resolution	<p>The Final Rule allows a school, in its discretion, to choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Any person who facilitates an informal resolution must be well trained. The Final Rule states:</p> <ul style="list-style-type: none"> - A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal

	<p>complaints of sexual harassment. A school may not require parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.</p> <ul style="list-style-type: none"> - Prior to resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. - Schools must not offer to facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
Retaliation	<p>The Final Rule expressly prohibits retaliation. Charging an individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.</p> <p>The school must keep confidential the identity of complainants, respondents and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.</p> <p>Complaints alleging retaliation may be filed according to the school's prompt and equitable grievance procedures.</p> <p>The exercise of rights under the First Amendment does not constitute retaliation.</p> <p>Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however a determination regarding responsibility, alone, is not sufficient to conclude that any party make a bad faith materially false statement.</p>