

## New Regulations on Sexual Harassment under Title IX Require Investigations, Grievance Procedures, and Appeals Among Other More Stringent Requirements

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On May 6, 2020, the United States Department of Education (USDOE) released its final rules relating to sexual harassment under Title IX. The regulations go into effect on August 14, 2020. The regulations require more formal procedures for the investigation of sexual harassment claims than previous regulations. A grievance procedure for Title IX sexual harassment claims has been required in the past, but the new regulations provide more detailed actions and conduct on the part of schools than previously required. ISBA will review the new regulations in more detail and provide more comprehensive analysis and revised policies and procedures in later publications. This article will provide an overview of the new regulations school board members need to be aware of and plan for in the coming months.

The new regulations require the school board to designate a person as a Title IX Coordinator and provide authority to the Title IX Coordinator to carry out the requirements of Title IX, its regulations, and school policy and procedures on Title IX complaints and investigations. The name of the Title IX Coordinator must be posted on the school corporation's website along with the contact information of the Coordinator, including an email address anyone can use to report sexual harassment. A report of sexual harassment may be made by phone, letter, email, or in person to the Title IX Coordinator. The school corporation must post its Title IX policy and grievance procedure on its website.

The new regulations require a detailed grievance process to be used when a written formal complaint of sexual harassment is filed. This procedure requires an investigation and a formal resolution of a formal complaint be determined by a decisionmaker. A hearing is not required under the new regulations, but a resolution procedure must be part of the grievance process. The decisionmaker of a formal complaint must be a different person than the one who investigated the complaint and cannot be the Title IX Coordinator. An appeal is required to be part of the grievance process based on a procedural error that affected the outcome of the formal complaint, a dismissal of a formal complaint, and/or newly discovered evidence that affects the outcome of the investigation and determination of a formal complaint. Both parties, the alleged victim of sexual harassment and the person who is accused of engaging in sexual harassment, have the right to appeal. As part of its grievance process, the school corporation is required to decide the standard of evidence to be used for all formal complaints – the preponderance of the evidence or clear and convincing evidence.

The regulations require the school corporation to provide training to its employees on sexual harassment and specific training to its Title IX Coordinator and decisionmakers on how to investigate and to conduct formal or informal resolutions of sexual harassment complaints under the regulations. The school corporation must post its training materials on the school corporation website.