



# Education Department Updates Title IX Regulations: Responding to Sex Discrimination and Harassment at School

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Title IX of the Education Amendments of 1972 (Title IX) [prohibits](#) sex discrimination in education programs that receive federal financial assistance. In [updated](#) regulations, the Department of Education (ED) has altered the obligations for schools when responding to allegations of sex discrimination, including sexual harassment. The regulations cover all education programs that ED funds, including all K–12 public school districts and most colleges and universities. The update also defines the scope of sex discrimination under Title IX to include discrimination based on sexual orientation and gender identity, a matter addressed in a previous [Legal Sidebar](#). ED scheduled the updated regulations to go into effect August 1, 2024. A number of [federal](#) district [courts](#) have [issued](#) preliminary [injunctions](#) against enforcement of the regulations in their entirety; the injunctions currently cover 15 states as well as an assortment of schools in other states, including those in which students or their parents are members of certain plaintiff groups. In general, those decisions have largely focused on ED’s interpretation of sex discrimination to include discrimination based on gender identity, though one court also [ruled](#) that some of the changes concerning how schools must respond to harassment complaints were unlawful.

This Legal Sidebar focuses on the changes the 2024 regulations make for a recipient school’s response to allegations of sex discrimination. Following a brief background on Title IX, it examines updated requirements for a recipient school’s grievance procedures when responding to allegations of sex discrimination generally, as well as more specific procedures for postsecondary institutions when investigating allegations of sex-based harassment in which students are harassed by other students or by a teacher. It continues with a discussion of changes as to what conduct amounts to harassment under Title IX, followed by a look at the altered standard required of schools when responding to allegations of discrimination and new monitoring and training obligations. It concludes with some considerations for Congress.

## General School Responsibilities Under Title IX

Title IX’s prohibition of sex discrimination [applies](#) to all the programs and activities of a recipient school, imposing requirements ranging from how institutions administer their [athletics](#) programs to how they

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respond to allegations of sexual harassment. While the statutory text does not explicitly mention sexual harassment, the Supreme Court has ruled, in the context of a private suit for damages against a school district, that a school’s “deliberately indifferent” response to incidents of sexual harassment—both by [teachers against students](#) and [between students](#)—can constitute discrimination based on sex. In addition to private enforcement in court against recipient schools, agencies that distribute federal funding to education programs also enforce the law. For instance, ED has long-standing [regulations](#) that require the appointment of a Title IX Coordinator and the adoption of grievance procedures to resolve allegations of sex discrimination.

Before 2020, those regulations did not address sexual harassment or specify in detail what the grievance procedures needed to include. Instead, ED primarily [expressed](#) its expectations for schools’ response to sexual harassment under Title IX through agency guidance documents. That changed in 2020, when ED substantially [revised](#) the Title IX regulations with a particular focus on sexual harassment. Those 2020 regulations added a definition of what conduct constitutes sexual harassment under Title IX, provided that schools with actual knowledge of harassment “must respond promptly in a manner that is not deliberately indifferent,” and imposed a number of procedural requirements for schools when responding to allegations of sexual harassment in particular.

As discussed below, the [updated](#) 2024 regulations make a number of changes for schools under Title IX. First, they impose updated grievance procedures that schools must implement for sex discrimination complaints generally, rather than just for harassment complaints as the 2020 regulations did. Second, they impose additional procedures applicable to harassment complaints concerning students at postsecondary institutions. Third, they alter the definition of what amounts to harassment under Title IX. Finally, they eliminate the deliberate indifference standard for responding to harassment complaints; instead, they impose a modified standard that is required of schools when responding to sex discrimination generally, as well as new training and monitoring requirements that schools must implement.

## Grievance Procedures for Complaints of Sex Discrimination Generally

The updated 2024 regulations require schools to [adopt](#) written grievance procedures for resolving complaints of sex discrimination. In some ways, the updated grievance procedures are similar to the [2020 regulations](#). For instance, like the 2020 regulations, the 2024 regulations require grievance procedures to include a [presumption](#) that a respondent (the person alleged to have violated the ban on sex discrimination) is not responsible until a determination is made at the end of the grievance process. The updated 2024 regulations, however, make important changes. In particular, the new regulations alter who is allowed to render decisions concerning culpability, the standard of proof used to make determinations of responsibility, as well as when and how parties may question opposing parties and witnesses. More broadly, they apply to all complaints of sex discrimination, not just harassment complaints as the 2020 regulations did.

*Decisionmaker:* The 2024 regulations apply to complaints of sex discrimination generally (including nonharassment complaints) and [allow](#) for a Title IX Coordinator or investigator to serve as the decisionmaker. They also require that the decisionmaker not have a conflict of interest or bias. By contrast, the 2020 regulations [provided](#) that a separate decisionmaker (not the Title IX Coordinator or the investigator) had to determine responsibility in resolving allegations of sexual harassment.

*Standard of Proof:* The new regulations also change the standard of proof a school may apply in their grievance procedures. Previously, the 2020 regulations [provided](#) that a school may apply the preponderance of the evidence standard (greater than 50% likelihood) or the more demanding clear and convincing standard for determining responsibility in cases of sexual harassment, but must apply the same standard to formal complaints of harassment against students as it does against employees (including faculty). Thus, when schools used the clear and convincing standard for harassment complaints against

faculty (which might be required under a collective bargaining agreement), the 2020 regulations required them to use that same standard for complaints against students.

By contrast, the updated 2024 regulations eliminate the requirement that schools use the same standard for complaints against students as used against employees. Instead, the regulations **require** schools to use the preponderance of the evidence standard unless they use the clear and convincing evidence standard in all comparable proceedings, including those concerning types of discrimination other than based on sex.

*Questioning Parties and Witnesses:* The 2024 regulations also change the requirements for questioning in grievance procedures. Before, the 2020 regulations **required** a live hearing for grievance procedures at postsecondary institutions, in which a party's advisor could cross-examine the other party and any witnesses. For K–12 schools, a live hearing was not required, but each party **was** permitted to submit written questions they wanted asked of the other party and witnesses, receive the answers, and ask follow-up questions. Now, aside from requirements discussed below for harassment complaints concerning students at postsecondary institutions, the updated 2024 regulations do not require schools to facilitate live or written questioning by parties or advisors in their general grievance procedures. Instead, they **require** that a school's grievance procedures include a process through which a decisionmaker, rather than parties or advisors, questions the parties and witnesses to assess credibility if it is both disputed and relevant.

## Harassment Involving Students at Postsecondary Institutions

The updated 2024 regulations incorporate some additional grievance procedures specific to allegations of sex-based harassment involving students at postsecondary institutions. One requirement raising possible constitutional considerations is the process for questioning parties and witnesses. While schools have a responsibility under Title IX to respond appropriately to an alleged victim's complaint of harassment, public schools may have certain constitutional constraints on disciplining students, rooted in due process. The regulations' harassment provisions for postsecondary institutions are perhaps best understood within that context. For instance, the U.S. Court of Appeals for the Sixth Circuit has **ruled** that the Due Process Clause requires that when a student is accused of misconduct, a public university must provide some type of hearing before imposing a sanction such as expulsion or suspension. In addition, when a decision turns on a credibility determination, the university "must give the accused student or his agent an opportunity to cross-examine the accuser and adverse witnesses in the presence of a neutral fact-finder." By contrast, the First Circuit has **concluded** that while the Due Process Clause does require public universities to conduct "real-time cross examination" of a complaining witness, this requirement can be satisfied through an inquisitorial system, such as questioning by a hearing panel, rather than a party or party's representative. The **Fifth Circuit** has largely **agreed** with the First Circuit's reasoning.

Previously, the 2020 regulations **required** a postsecondary institution's grievance procedures to provide for a live hearing. Each party's advisor was required to be given the opportunity "directly, orally, and in real time" to ask the other party and any witness relevant questions, including ones challenging credibility. Upon request, this questioning could occur in separate rooms with the aid of technology. Before answering questions, decisionmakers must determine whether they are relevant and may exclude nonrelevant questions.

Now, the 2024 regulations eliminate the requirement for live hearings, although schools may conduct them if they choose (ED appears to **acknowledge** the possibility that some schools may be required by case law to conduct live hearings). Instead, schools **must** provide a process for the decisionmaker to question parties and witnesses to assess credibility if it is both disputed and relevant. This can be done **through** two different methods, both of which require, unlike the general procedures described above, a role for parties or advisors to ask or submit questions. First, the process could include individual meetings with the decisionmaker or investigator, who can ask their own relevant questions, and must also ask initial

and follow-up relevant questions the parties propose during individual and follow-up meetings. If a school chooses this route, it must provide each party with recording or transcripts with enough time to have a reasonable ability to propose follow-up questions. Alternatively, a school can provide a live hearing, where the decisionmaker can ask relevant questions, and a party's proposed relevant questions can be asked by the decisionmaker or a party's advisor.

As mentioned above, a federal district court ruled that some of the changes to what schools must include in their grievance procedures were unlawful. For instance, the court [determined](#) that eliminating the prohibition in the 2020 regulation against using a single investigator to make determinations of responsibility was arbitrary and capricious, as "the single-investigator model ... lacks justification." In addition, the court [ruled](#) that the updated 2024 regulation failed to justify removing the live hearing requirement for postsecondary institutions, which "strip[s] the accused of his right to confront live witnesses."

## Conduct That Amounts to Harassment

The updated 2024 regulations also modify what conduct amounts to sexual harassment. As background, the 2020 regulations [defined](#) "sexual harassment" for purposes of Title IX as conduct on the basis of sex that meets at least one of three prongs. The first prong was when an employee conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (quid pro quo harassment). Another prong was when a student or employee commits sexual assault, dating violence, domestic violence, or stalking. Finally, "[u]nwelcoming conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity" constituted sexual harassment. This third prong drew from the Supreme Court's decision in *Davis v. Monroe County Board of Education*, which crafted a standard governing private suits for damages against schools for a "deliberately indifferent" response to student-to-student sexual harassment.

The updated 2024 regulations [largely retain](#) the first two prongs: quid pro quo harassment (although the 2024 regulations expand the definition to include a school's agent or other person authorized to provide services), as well as sexual assault, dating violence, domestic violence, and stalking. The third prong, hostile environment harassment, is newly [defined](#) in the 2024 regulations as "[u]nwelcoming 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" (emphases added). The 2024 regulations appear to make it somewhat easier to establish harassment under this prong. The preamble to the regulations acknowledges the shift, [observing](#) that ED "believes a broader standard is appropriate to enforce Title IX's prohibition on sex discrimination in the administrative context, in which educational access is the goal and private damages are not at issue."

## Response Standard When Addressing Allegations of Discrimination

ED has also altered the overall standard expected of schools when responding to allegations of discrimination. Previously, under the 2020 [regulations](#), schools with actual knowledge of sexual harassment were required to "respond promptly in a manner that is not deliberately indifferent." That standard drew from the Supreme Court's decision in *Davis*, which concerned damages liability against recipient schools in cases of student-on-student harassment (as well as *Gebser v. Lago Vista Independent School District*, which concerned a teacher's harassment of a student). According to *Davis* and the 2020 [regulations](#), deliberate indifference means a clearly unreasonable response in light of known circumstances.

By contrast, the updated 2024 regulations eliminate the deliberate indifference standard. They also spell out what schools must do to address potential sex discrimination generally, beyond allegations of sexual harassment. The updated regulations [provide](#) that when Title IX Coordinators are “notified of conduct that reasonably may constitute sex discrimination,” they must take certain actions “to promptly and effectively end any sex discrimination . . . prevent its recurrence, and remedy its effects.” These include [actions](#) such as offering supportive measures, initiating grievance procedures in response to a complaint, triggering the informal resolution process if appropriate and requested by all parties, and in some cases determining whether to initiate a complaint under the grievance procedures independently. More broadly, even without a complaint, when Coordinators learn of actions that reasonably may amount to sex discrimination, they [must](#) “take other appropriate prompt and effective steps” to ensure that discrimination does not continue or recur. The preamble [explains that](#) Title IX Coordinators must “take[] reasonable steps calibrated to address possible sex discrimination based on all available information.” When a Title IX Coordinator’s response does not eliminate discrimination and prevent its recurrence, they must take additional steps.

One practical result of the updated regulations appears to increase Title IX Coordinators’ duties. Along with the requirements discussed above, under the 2024 updated regulations, Title IX Coordinators must [monitor](#) for barriers to reporting potential sex discrimination and take steps calculated to remove those barriers. According to the [preamble](#), examples of potential steps include training, increasing staffing at a Title IX Coordinator’s office, and circulation of Title IX materials.

## Annual Title IX Training Requirements for All Employees

The 2024 regulations expand Title IX training requirements for schools as well. Before, the 2020 regulations [required](#) schools to provide training for Title IX Coordinators, investigators, and decisionmakers under a school’s grievance procedures for responding to formal complaints of sexual harassment, as well as anyone who facilitates informal resolution procedures. The 2024 regulations [require](#) annual Title IX training for all school employees, including prompt training for new hires and certain employees who change job duties. More specific training requirements apply to individuals that implement the school’s grievance procedures, facilitate informal resolution procedures, and serve as Title IX Coordinators.

## Considerations for Congress

The obligations for schools under Title IX when responding to allegations of sexual harassment have shifted through successive presidential administrations; at the same time, courts have imposed their own requirements in cases challenging the procedures schools have used to adjudicate these issues. The 2024 regulations once again alter the responsibilities of recipient schools when responding to allegations of sexual harassment; and establish new procedures for responding to complaints of sex discrimination generally. If Congress decides that a school’s responsibilities under Title IX should be made explicit in statutory text, options include providing a definition of sexual harassment or delineating more specifically obligations under the statute, subject to applicable constitutional requirements. Alternatively, [pursuant](#) to the Congressional Review Act, Congress could pass a joint resolution of disapproval of the regulations within the time limits that statute requires if it disagrees with the substance of the 2024 regulations. The House of Representatives [passed](#) such a resolution on July 11, 2024. Additionally, Congress may also seek to limit enforcement of those aspects of a regulation it might disagree with through appropriations riders, though these provisions generally expire at the end of the relevant appropriations cycle.

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