



ATIXA Position Statement: Compliance with the 2020 Title IX Regulations Will Require a Formalized and Expanded Title IX Team

The ATIXA Advisory Board's statement regarding the necessity to expand Title IX teams to assure compliance.



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ATIXA Position Statement

About ATIXA

Founded in 2011, ATIXA is the nation's only membership association dedicated solely to Title IX compliance and supports our over 4,500 administrator members who hold Title IX responsibilities in schools and colleges. ATIXA is the leading provider of Title IX training and certification in the U.S., having certified more than 7,250 Title IX Coordinators and more than 23,550 Title IX investigators since 2011. ATIXA releases position statements on matters of import to our members and the field, as authorized by the ATIXA Board of Advisors. For more information, visit www.atixa.org.

Introduction

In the past decade, full-time Title IX Coordinators and Title IX offices have become more common for schools, colleges, and universities. Having pools of Title IX-trained personnel has even grown in popularity, both within and across organizations. With the 2020 Title IX regulations, the formation and operation of Title IX teams has become a necessity for recipients to achieve compliance.

Although ATIXA usually directs its position statements to Title IX personnel, this statement is directed to senior-level campus, school, and district leaders. It is vital for you to understand the complexity and challenges ahead under Title IX.

As a foundation, recall that compliance with Title IX of the Education Amendments of 1972 is mandatory for all recipients of federal financial assistance, and that a failure to comply can result in investigation and accountability from Offices for Civil Rights within government agencies and costly lawsuits, in addition to negative publicity and reputational damage.

What Do Senior-Level Leaders and Stakeholders Need to Know?

First, we encourage our Title IX administrator members to share this Position Statement with key school, campus, and district stakeholders and leaders. To these leaders, Title IX is now likely one of the most complex regulatory compliance obligations your institution or district is facing.

The U.S. Department of Education (ED) needed 2,068 pages to explain 15 pages of new federal regulations. ATIXA's Regs Comprehensive Implementation Guide needed 130 pages more to explain those 15 pages and translate them into operational precepts for the field.

ED, through these new regulatory requirements, promotes a new and/or expanded bureaucracy of Title IX personnel, operating under a complex set of rules for dramatically expanded due process protections, transparent sharing of all evidence collected during an investigation, formal live hearings, advisors¹, sophisticated rules of questioning and evidence, and mandated appeals.

ED is turning your educational hearings into mini-courtrooms and expanding employee rights that may not have previously existed, with live hearings, cross-examination, and appeal requirements.

If you will be presiding over these “courtrooms” in any way, perhaps as a hearing decision-maker or chair, the new regulations also create extensive training requirements for those roles. Those serving as appeals officers face similar, extensive training requirements.

It is also worthy of note that these regulations, for all their page-girth, are actually fairly narrow in the overall scope of Title IX's protections. They address only the “Big Five” offenses of sexual harassment, sexual assault, dating violence, domestic violence, and stalking. Many of the other obligations of the Title IX office, including climate, program equity, athletics, pregnancy and parenting, LGBTQIA+ protections, etc. are not covered by these regulations, but still fall within the existing original 1975 Title IX regulations, and must be addressed by your Title IX office.

¹ Many of whom will be and will need to be attorneys, but also others including friends and family members who are chosen by the parties, are untrained, and perhaps unqualified.

This Is Not a Time to Cut Title IX Budgets

Compliance with these new rules will cost every school and college far more than what ED has estimated in its published regulatory cost estimate. When your Title IX Coordinator comes to you with budget requests, they are not simply leveraging the new regulations to fight for their fair share of the budget pie, they are telling you that you will need to allocate a larger slice of that pie to Title IX, or your compliance program will fail.

Please, take them seriously.

We know resources are scarce, especially offset against the financial burdens caused by the COVID-19 pandemic, but budgets will need to be reconfigured to accommodate new and expanded requirements. Ideally, budgets will expand in terms of resources for required and effective training, but we also can expect substantial needed new resources in the form of:

- Key staffing roles
- Support staff
- Training the Title IX Team
- Technology (databases/records management, secure document transfer, virtual hearing equipment, recording equipment)
- Stipends for new Title IX Team members
- Fees for external assistance in the form of attorneys/consultants
- Policy development and consulting expertise, and
- Expanded access to legal review and counsel

Might the Regulations Just Go Away Soon?

Some of you may have been told to wait it out, in the hopes that these regulations will be shot down by the courts, or rescinded next year by a Biden administration. We do not think this is sound advice. One thousand Title IX administrators attended ATIXA's certification courses this June to learn how to implement the new regulations. They do not think that we are going to get relief from the regulations any time soon, and we agree with them.

Even if the regulations are enjoined by a federal judge, a partial injunction, which would affect only some parts of implementation, is much more likely than a full injunction. And, in conversations with a number of potential future Biden political appointees to ED, they think it will easily be a year or more after Biden might take office before any significant action is taken with respect to replacing the regulations².

Until then, the courts are making significant new due process rulings with enough frequency to acknowledge that the regulations are not the only source of pressure to adopt new and more formal models of resolution.

Might the Regulations Just Go Away Soon?

At the same time, you may face demands from student activists and protestors in the fall, who see these regulations as socially unjust. While the due process protections that are incorporated into the regulations are important, they swing the pendulum too far, and will likely compromise rights that Title IX was meant to protect.

Compliance is not just a task now, it has the potential to deepen oppositional stances between those who identify with the rights of survivors and those who identify with the rights of respondents.

² And, should the current administration remain in place, expect full enforcement of the regulations they spent two years putting into effect.

Might the Regulations Just Go Away Soon? - cont.

The decisions you as leaders make about policy may pit students against employees, including faculty, in a battle over the evidentiary standard of proof you apply to cases that fall under Title IX. Choose your standard of proof carefully.

Narrow your campus roster of mandated reporters at your own peril, as many students may see such a retreat – while permitted by the regulations – as a loss of safe venues for seeking support and resources.

The Formal and the Informal Both Demand Your Focus

As you move to revise and refine your formal grievance process(es), you're likely going to face sharply increased demand for informal and alternative resolution options from Complainants and Respondents.

Be open to informal resolution mechanisms, but not at the cost of starving your formal process of the staffing and training it will need to operate proficiently. Do not cut corners on compliance or you will increase your institution's risk of lawsuits. The formal grievance process, including its staffing and training mandates, is the industry standard by which you will now be measured. Students and employees can easily sue if you do not accord them the full panoply of rights required by these new regulations. Your most contentious and complicated complaints are unlikely to result in a completed informal resolution, and your formal resolution process must be ready to go at the outset or in the event of a failed alternative resolution.

With respect to reinvigorating, starting, or expanding informal resolution programs, expect a need to invest in staffing and/or further training.

The way we see it, the new regulations likely require recipients to develop a new resolution apparatus for formal grievances, an informal resolution process, and a stand-alone semi-formal resolution process for those complaints that are dismissed under, or fall outside of, Title IX. All by August 14.

The Title IX Team

So, what does the Title IX Team look like? With doubling up of some roles, we think 10-15 people will be a common team size for smaller schools and districts, if they have smaller caseloads. On the high-end, teams of 35-40 will be in range, though again, de-centralized K-12 districts may add at least one team member per building.

Our estimates are based on the number of roles delineated by the regulations, and the ways that the regulations do or do not permit overlap between those roles. You do not have to hire to fill these roles, necessarily, as they may be filled by existing personnel, but any assumption that you are not adding substantially to any existing employee's portfolio is unrealistic.

The regulations without doubt will have a significant institutional cost in terms of your staff productivity and potential burnout. Title IX work carries an emotional load, as well. Many institutions and organizations will find that they need full-time Coordinators and some will need full-time investigators.

The Title IX Team - cont.

Here is what a breakdown looks like to us. You are going to need:

- A (full-time) Title Coordinator or maybe more than one. = 1-2 people
- A staff³ of deputy coordinators⁴ = 3-6 people
- A hearing chair and at least one spare⁵ = 1-2 people
- Hearing panelists (2+the chair) – these are optional, but recommended⁶ = 2-4 people
- Advisors⁷ (you will now be appointing or hiring advisors for the parties) = 4-12 people
- A Hearing Facilitator (could be a coordinator or deputy) = 1-2 people
- Appeal Officers (1 for dismissals⁸, 1 for appeals of hearings, 1 spare) = 3-6⁹ people

³ It is important to keep in mind that there is a whole realm of Title IX compliance outside of these regulations (which cover only sexual harassment, sexual assault, domestic violence, dating violence, and stalking). You will need deputies or other equity/equal opportunity staff to address these additional, and equally important, Title IX requirements, such as climate surveys, pregnant and parenting students, athletics equity, program equity, single-sex program access, LGBTQIA+ protections, advocacy, training/education, prevention, etc.

⁴ Representing student services, HR, athletics, prevention, academic affairs, etc.

⁵ In case of illness, conflicts, multiple cases, etc.

⁶ And, you'll need alternates if any panelists are disqualified or unavailable.

⁷ How many you need, and at what cost, will depend on case volume and number of parties.

⁸ Dismissals are both permitted and required under the new regulations under certain circumstances.

⁹ Unless you offer an appeal panel, in which case, add three more.

The Title IX Team - cont.

You also will want to assess the need for Title IX support staff, administrators to manage emergency removal decisions (could be a coordinator or deputy), dismissal decisions (could be a coordinator or deputy), threat/risk assessments (existing BIT or TAT?¹⁰), and administrators to run alternate processes outside of Title IX. Hopefully, you have these positions filled already.

You might also need a pair of investigators, or more. The regulations permit Coordinators to investigate, but then they should serve as hearing facilitators and should not be involved in dismissal or emergency removal decisions.

You will probably need 1-10 investigators, depending on your caseload, but we have not added them to the official tally above on the assumption that you may be able to double some up with your Coordinator and/or deputies, or use external investigation firms.

Within K-12 environments, Title IX staffing is all over the map, and it really is too early to know how staffing models will eventually evolve. Right now, schools are trying to figure out minimum coverage, but they will likely vastly underestimate the time allocations needed, based on the similar ED activism on Title IX we saw directed toward higher education with the 2011 Dear Colleague Letter.

We are seeing some logical movement toward the building-based deputy model, so school districts with 100 school buildings may appoint a Title IX Team with more than 100 representatives, but they may quickly figure out there are few vice principals with the bandwidth to take on substantial compliance or investigation roles under Title IX, given their other responsibilities.

¹⁰ The regulations require a violence risk assessment, which often should be performed by a Behavioral Intervention Team or Threat Assessment Team, if the campus, school, or district has such a capacity available.

What Will Happen if You Don't Prioritize Title IX Compliance, Staffing, and Training?

Each of the roles described above, except for advisors, has an attached training requirement per the regulations. The roles are all complex, sophisticated, and multifaceted. As noted above, many of the skills may exist in-house already for some institutions and organizations, but many others will need to build and expand capacity. And although there is no training mandate for advisors in the regulations, most institutions will likely want to provide institution-appointed advisors with information or training about the process and their role in it, at the very least.

What are the risks? Losing the confidence of your community. Reputation. Investigation and accountability from Offices for Civil Rights within government agencies. Lawsuits that allege breach of contract, negligence, Title IX claims, Section 1983 actions, and more.

We are concerned that the scope of changes in the new regulations present a real risk of systemic failure for institutions also facing severe economic pressures if leaders underestimate what is being added to the compliance requirements, and what levels of your support will be essential to meet them.

We hope you will also bring creativity to your staffing needs. We are seeing schools located within systems developing cooperative agreements for shared resources. We are seeing the same with state-based coalitions, or schools located within similar geographic areas. Local advisor pools may also make a lot of sense. We are also seeing more and more schools engage external investigators, and now, hearing chairs and decision-makers. That may represent a cost savings only when compared to hiring full-time personnel to fulfill the same roles. Fortunately, the regulations create a uniformity of policy and procedure that has never existed between recipients previously. That means that one school can loan an investigator to another, or share coordinators, in a way that will be more likely to translate from school to school. Maybe you won't have the caseload to support a full-time chair who is an attorney, but sharing that position between 3-4 campuses might make sense.

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What Will Happen if You Don't Prioritize Title IX Compliance, Staffing, and Training? - cont.

Training may vary, but the policies and procedures will be more alike than different, which will greatly facilitate shared employees, or a pooled approach to coverage across institutions, where Title IX Team members can be loaned to cooperating schools as needed. There will be some need to address insurance and clear role definition for borrowed personnel, but smaller and more resource-strapped schools will find these approaches essential.

For campus, school, and district leaders, we hope this Position Statement is valuable to you in accurately planning for and implementing meaningful actions to enhance your Title IX infrastructure to meet these new demands while doing right by your community. ATIXA will be here, helping you. Best of luck!

This position statement was unanimously adopted by the ATIXA Advisory Board on July 15th, 2020.

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