

Frequently Asked Questions

**Concerning the October 2, 2024 “New Title IX Regulations go into Effect on August 1, 2024.
Is your Charter School Ready?” Webinar**

Thank you for attending the “New Title IX Regulations go into Effect on August 1, 2024. Is your Charter School Ready?” webinar presented by Krokidas & Bluestein LLP to the Massachusetts Charter Public Schools Association on October 2, 2024. Attendees of the webinar submitted questions on various Title IX topics before, during, and after the webinar, which have been aggregated and addressed in this Frequently Asked Questions (“FAQ”) document. Consult the webinar slide deck and/or audiovisual recording for a more detailed discussion of the 2024 amendments to Title IX. **Please note that this FAQ document is for informational purposes only and does not constitute legal advice. Consultation with legal counsel is recommended for specific questions and policy implementation.**

1 ***What are the various roles to be included in a school’s Title IX grievance procedures, can there be overlap in those roles, and does K&B recommend that certain school personnel fill particular Title IX roles?***

Title IX identifies multiple roles to implement compliant grievance procedures. **Title IX Coordinators**, when notified of conduct that reasonably may constitute sex discrimination under Title IX, are responsible for coordinating a school’s efforts to promptly and effectively end sex discrimination, prevent its recurrence, and remedy its effects. **Investigators** will conduct investigations compliant with Title IX by gathering evidence and conducting interviews. **Decisionmakers** are to determine whether, based on an objective evaluation of the relevant evidence collected, a respondent’s conduct violated Title IX, and if so, recommend sanctions for the respondent and remedies for the complainant. **Appeals Decisionmakers** are tasked with assessing any appeals submitted by parties and determining the outcomes of those appeals. A school that elects to include informal resolution in its Title IX policy should also appoint **facilitators of the informal resolution process**, who will coordinate parties’ efforts to resolve their dispute outside of the Title IX grievance procedures.

Title IX does not require that the grievance procedure roles be fulfilled by any particular school positions (i.e., Assistant Principal, Principal, etc.), but the regulations do require that the individuals serving in each of those roles be trained on Title IX and on the unique responsibilities associated with their roles. Options a school may consider for the various Title IX roles include, but are not limited to, the following:

Roles within Title IX Grievance Procedures	Positions within School*
Title IX Coordinator	School employee serving in a compliance role
Investigator	Assistant Principal or Dean
Decisionmaker	Principal
Appeals Decisionmaker	Executive Director, Head of School, or some other individual at or above the level of Principal, or an independent third party selected by the board of trustees of the school
Facilitator of Informal Resolution	School employee experienced in conflict resolution

*These are suggestions only. A school may assign Title IX roles to its staff in any manner that works best for the school.

In general, school employees who have been trained on the 2020 Title IX regulations and who have experience generally with due process requirements, how to conduct a thorough investigation, etc., may be good candidates to consider for fulfillment of the Title IX roles. The 2024 amendments to Title IX indicate that the decisionmaker in a given matter may be the same person as the Title IX Coordinator or investigator, though schools may want to avoid having one individual serve in multiple roles during the Title IX grievance process so as to avoid the appearance of a conflict of interest or bias. The decisionmaker in a given matter should also be different than any person deciding on appeals for that matter.

2 *How and when should information about the 2024 amendments to Title IX be shared with school personnel?*

The 2024 amendments to Title IX became effective on August 1, 2024. Notice of your school’s Title IX policy and grievance procedures and publication of the Title IX policy and grievance procedures should occur as soon as practicable. As described in Question 5 below, schools should publish information on how to locate the school’s Title IX policy and grievance procedures and how to make a complaint of sex discrimination, among other things, on the school’s website and in its handbooks, catalogs, application forms, etc. In addition, your school’s updated Title IX policy and grievance procedures should be shared with parties to a Title IX investigation along with the Notice of Allegations issued upon a school’s initiation of a Title IX investigation. (See Slides 5, 23, and 29.)

3 *What should I know about Title IX as school leader?*

School leaders are responsible for ensuring that individuals involved in the Title IX grievance process (i.e., Title IX Coordinators, decisionmakers, etc.) are clear on their roles and responsibilities and have appropriate, adequate training. More broadly, all staff and students should receive training on Title IX more generally, including on the conduct prohibited by Title IX, how to access a school’s Title IX grievance process, etc. (See Slides 42 and 43.)

4 *What are the training requirements for school staff under the 2024 amendments to Title IX?*

All school employees must be trained on the school's obligation to address sex discrimination in its education program or activity; the scope of conduct that constitutes sex discrimination under Title IX; and all applicable notification and information requirements mandated by the Title IX regulations. In addition, individuals involved in the Title IX grievance process – i.e., Title IX Coordinators, investigators, decisionmakers, appeals decisionmakers, and facilitators of the informal resolution process, if such a process is adopted by the school's Title IX grievance procedures – must receive additional training on their roles and responsibilities under Title IX. (See Slides 42 and 43.)

5 *Should a school's handbooks be updated in light of the 2024 amendments to Title IX?*

Yes. A school receiving federal financial assistance must prominently include all elements of the notice of nondiscrimination (i.e., a statement the school prohibits sex discrimination and does not discriminate on the basis of sex, the name and contact information of the school's Title IX Coordinator, how to locate the school's Title IX policy and grievance procedures, how to make a complaint of sex discrimination, etc.), on its website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to students, parents/guardians, employees, applicants for admission or employment, and unions and professional organizations holding collective bargaining or professional agreements with the school. (See Slides 5 and 23.)

6 *When and how should a school employee report conduct as a possible violation of Title IX?*

All school employees who are not confidential employees should report conduct that may reasonably constitute sex discrimination when they learn of such conduct. While a school may implement various reporting mechanisms, the school's Title IX Coordinator should ultimately be made aware of reports and complaints of sex discrimination, as the Title IX Coordinator is responsible for managing the school's response under Title IX. (See Slides 18, 19, and 24.)

7 *When should notice of the opening of a Title IX investigation be issued to parties?*

When a Title IX Coordinator receives a complaint, they are to determine whether the school should open the complaint for investigation or dismiss it. A Title IX Coordinator may determine to dismiss a complaint for one of the following reasons: (1) the alleged conduct, even if true, would not constitute sex discrimination under Title IX; (2) the school is unable to identify the respondent after taking reasonable steps to do so; (3) the respondent is not participating in the school's education program or activity and is not employed by the school; or (4) the complainant voluntarily withdraws any or all of the allegations in the complaint, and the school determines that any remaining allegations would not constitute sex

discrimination. If the complaint is opened for investigation, the parties (any complainant(s) and respondent(s) in the matter) should be issued a Notice of Allegations, which notifies the parties of the allegations opened for investigation under Title IX. (See Slides 27, 28, and 29.)

8 *Can you provide more information on the evidence review stage of the Title IX grievance procedures?*

According to the 2024 amendments to Title IX, parties to a Title IX investigation shall be given an equal opportunity to access the evidence gathered over the course of the investigation that is relevant to the allegations of sex discrimination opened for investigation and not otherwise impermissible, or to an accurate description of that evidence. If a school initially provides the parties a description of the evidence (i.e., a witness interview summary), all parties are entitled to an equal opportunity to access the full underlying evidence (i.e., the full notes, transcript, or recording from the witness interview) upon the request of any party. Parties must also be granted a reasonable opportunity to respond to the evidence or evidence description(s). In addition, schools must take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures, for example, through the redaction of personally identifiable information in written or graphic documentation. (See Slides 33 and 34.)

9 *How are privacy considerations addressed by the 2024 amendments to Title IX?*

The 2024 amendments to Title IX indicate that a school must not disclose personally identifiable information obtained in the course of the school responding to sex discrimination or otherwise implementing the Title IX grievance procedures, and Title IX also indicates that a school must take reasonable steps to prevent and address the unauthorized disclosure of information and evidence obtained solely through the grievance process. However, there are certain occasions when personally identifiable information may be disclosed in the Title IX grievance process: (1) when the school has received prior written consent for the disclosure, (2) when the information is disclosed to the parent, guardian, or legal representative of the person whose personally identifiable information is at issue, (3) when required by state or local law, and (4) as required by federal laws and regulations, including for compliance with Title IX.

For example, Title IX requires that the Notice of Allegations – which is to be provided to parties upon the initiation of an investigation under the school's Title IX grievance procedures – include the identities of the parties. The parties' identities should be disclosed to all parties, but if the parties are students, their names and any other personally identifiable information should be redacted from the written copies of the Notice of Allegations issued to the parties, as contemplated by the Family Educational Rights and Privacy Act ("FERPA"). Under the 2024 amendments to Title IX, FERPA, which prohibits the unauthorized disclosure of personally identifiable information from a student's education record, continues to apply in the context of enforcing Title IX. FERPA indicates that a school may disclose records or evidence after the removal of all personally identifiable information contained therein, and such removal may occur through de-identification methods, such as redaction. In a matter involving students, a

school may redact documentation issued to the parties, such as the Notice of Allegations, by, for example, blacking out student names and any other personally identifiable information of students.

Title IX also excludes certain other information from disclosure and consideration, namely: (1) evidence that is protected under a privilege (e.g., attorney-client privilege) or confidentiality (e.g., information provided to a confidential employee); (2) records made or maintained by a physician, psychologist, or other recognized professional in connection with treatment; and (3) evidence relating to the complainant's sexual interests or prior sexual conduct. Evidence in these categories, with narrow exceptions, is considered impermissible and must not be accessed, considered, disclosed, or otherwise used regardless of whether it is relevant. (See Slides 20, 29, and 33.)

10 *Would a person who leads human resources work at a school be considered a de facto confidential employee?*

No, a person leading human resources ("HR") work, i.e., a Director of HR, would not be a de facto confidential employee, but a school may designate any employee, including someone working in HR, as a confidential employee. When designating a confidential employee – which schools are permitted, but not required, to do under Title IX – schools should be mindful to avoid creating conflicts of interest, or the appearance of such conflicts. An HR Director, for example, will likely be involved in making employment decisions, so it may not be advisable for a school to have the HR Director serve as a confidential employee for any school employees for whom the HR Director might be called upon later to make an employment decision related to the Title IX matter which might create a conflict. (See Slides 18 and 19.)

11 *What is a school's responsibility with regard to conduct that occurs off campus, and what are reasonable measures schools can put in place to address off-campus conduct between students?*

Schools have a responsibility under the 2024 amendments to Title IX to respond to sex discrimination occurring under their education program or activity in the United States. While the 2024 amendments to Title IX make clear that Title IX does not apply extraterritorially, i.e., it does not apply to conduct that occurs outside of the United States, the 2024 amendments nevertheless clarify that schools have a responsibility to respond to conduct that occurred outside the United States or outside of the school's education program or activity when such conduct contributed to a hostile environment at the school's education program or activity in the United States. As a result, while circumstances will be case-specific, a school may have a duty under Title IX to address or investigate certain conduct that occurs off campus. In considering whether and how to address conduct that occurs off campus, schools must be mindful of the rights afforded to students and other potential respondents, including but not limited to First Amendment rights, and should consult with legal counsel as needed to determine appropriate action.

Under Title IX, a school may offer and coordinate supportive measures to a party to restore the party's access to the school's education program or activity or to provide support to a party during the Title IX grievance process or informal resolution process. Schools may elect to offer and coordinate supportive measures to address off-campus conduct between students, e.g., through counseling, escort services, increased security, and restrictions on contact. Schools may additionally address off-campus conduct between students in accordance with school policies and applicable laws. (See Slide 15, 25, and 26.)

12 *Can disciplinary actions be taken against a student for conduct occurring at the same time as a Title IX investigation, though not an allegation within that investigation, prior to the conclusion of a Title IX investigation and written determination?*

The 2024 amendments to Title IX provide that schools are not precluded under Title IX from removing a respondent from the school's education program or activity on an emergency basis, provided that the school undertakes an individualized safety and risk analysis, determines that an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. That provision, however, must not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. Similarly, in the context of employees, Title IX does not prohibit a school from placing an employee respondent on administrative leave from employment responsibilities during the pendency of the school's grievance procedures. That provision must not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990. Therefore, a school may take action against a student, e.g., emergency removal, during a Title investigation but prior to a Title IX determination, under certain circumstances, including when the criteria to impose emergency removal are met and when the conduct prompting the disciplinary action would not constitute sex discrimination under Title IX. In any event, schools must respect the presumption of non-responsibility under Title IX for respondents, and must not discipline a student, or any respondent, *for violation of Title IX* prior to the conclusion of the Title IX grievance process and the issuance of a written determination that the respondent violated Title IX. (See Slides 20 and 39.)

13 *Are schools permitted to take action to prevent further offensive conduct prior to a Notice of Allegations being issued to the parties, i.e., prior to a complaint being opened for investigation?*

Yes. When a school – via any of its employees, including the Title IX Coordinator – is made aware of conduct occurring under its education program or activity in the United States that may reasonably constitute sex discrimination, the school must take action to promptly and effectively end the sex discrimination, prevent its recurrence, and remedy its effects, regardless of whether or not a complaint has been filed or opened for investigation. Title IX

Coordinators may offer and coordinate supportive measures that may prevent or alleviate further offensive conduct. (See Slides 16, 24, 25, and 26.)

14 *How are due process rights maintained for both complainant and respondents?*

The grievance procedures outlined in the 2024 amendments to Title IX include a number of provisions addressing due process considerations for both complainants and respondents. For example, Title IX mandates that schools adopt grievance procedures that, among other things, treat complainants and respondents equitably; prohibit conflicts of interest or bias among Title IX Coordinators, investigators, and others implementing the Title IX grievance procedures; include a presumption that the respondent is not responsible for the alleged sex discrimination unless and until such a determination is made at the end of the grievance procedures; establish reasonably prompt timeframes and permit the parties to request extensions of timeframes; require the school to take reasonable steps to protect the privacy of parties and witnesses; require an objective evaluation of all relevant evidence; and prohibit retaliation. In addition, the Title IX regulations permit parties to submit relevant inculpatory and exculpatory evidence during the grievance process and to both access and respond to relevant evidence. (See Slides 20, 33, and 34.)

Please reach out to webinar presenters and K&B attorneys Bettina Toner (btoner@kb-law.com) and Eric Jordan (ejordan@kb-law.com) with any questions or requests you may have regarding the webinar, Title IX generally, or your school's Title IX policy and grievance procedures.