

VENTURA USD
NEW TITLE IX REGULATIONS

Important Information: NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE, often referred to generally as Title IX.

The U.S. Department of Education’s new Title IX regulations were released in May 2020 and took effect as of August 14, 2020.

This information is provided to introduce you to roles, rights and responsibilities under Title IX and other important changes in the regulations implementing the law. These regulations are specific to addressing sexual harassment as covered under Title IX, and do not address other rights and responsibilities regarding discrimination and harassment that may be available under the District’s Uniform Complaint Procedures process.

Each recipient of federal funds, such as the Ventura Unified School District, must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under these regulations. That employee must be referred to as the “Title IX Coordinator.” Stakeholders must be informed of the name or title, office address, email, and telephone number of the Title IX Coordinator.

This is the District level Title IX Coordinator (Assistant Superintendent, Human Resources); however, individual district employees have responsibilities under Title IX as well. For instance, district employees must report known acts of sex discrimination and sexual harassment to the Title IX Coordinator or to someone with authority to take action regarding such conduct. In most cases the initial reporting would go to the site Principal and/or Assistant Principal.

The District’s Title IX Coordinator is Dr. Jeff Davis, the Assistant Superintendent of Human resources. The office address is: 255 W. Stanley Ave, Ventura, CA 93001. The phone number is 805-641-5000 ext. 1150; the fax number is 805.653.7853; and the office website is:
<https://www.venturausd.org/hr/HumanResources.aspx>.

Please email any Title IX concerns to: titleix@venturausd.org. You may also visit <https://www.venturausd.org/TitleIX.aspx> on the district website to access more information on Title IX and to assist a complainant in making a Title IX complaint.

WHO MUST BE NOTIFIED REGARDING THE TITLE IX COORDINATOR’S ROLE AND CONTACT INFORMATION?

The District notifies stakeholders of the Title IX Coordinator’s role and contact information through a variety of mediums. The information is posted on the District’s home page under links related to nondiscrimination notices.

The information is also posted on the Ventura Unified School District website at <https://www.venturausd.org/TitleIX.aspx>. The information can also be located in the Annual Notice of Parents’ Rights and Responsibilities that is provided to all students’ families. Further, the information is available in the District’s Title IX policy, **which is reviewed annually at all school sites**. Additional information and resources can be gathered in speaking with your site Principal and/or Assistant Principal.

WHO CAN REPORT?

Any person may report sex discrimination, including sexual harassment; this would be true whether or not the reporter is the alleged victim. The report may be made to the District's Title IX Coordinator or to an elementary or secondary school employee, regardless of that employee's job description. In fact, employees may be the ones reporting if they were witnesses to the harassment.

Again anyone may **report** sexual harassment, which requires the school to then offer supportive measures to the complainant or alleged target of the conduct and inform the complainant of the process for **filing a formal Title IX complaint** to begin the complaint process. A formal complaint can be filed by a complainant or the complainant's duly- authorized representative by accessing the following link: <https://www.venturausd.org/HumanResources/ComplaintProcedures/tabid/1580/ItemId/527/Default.aspx>

The report is made on behalf of an individual known as a complainant; in other words an individual who is alleged to be the victim of the conduct. Whereas, the respondent is an individual who has been reported to be the perpetrator of the conduct. The complaint procedure that is invoked by the filing of a complaint by a complainant or the complainant's duly-authorized representative is meant to determine whether the respondent was or is engaged in sexual harassment.

In summary, a report is different than a complaint. Lastly, it's important to know that a report is also distinguished from making a report of sexual misconduct to law enforcement or child protective services and doesn't remove a school's responsibilities under Title IX, except for delays that **may** result from good cause related to a law enforcement investigation.

WHAT IS SEXUAL HARASSMENT?

In order to report sexual harassment or to assist someone in filing a complaint under Title IX specifically, it is important to understand what constitutes sexual harassment.

Sexual harassment is conduct on the basis of sex and satisfies one or more of the following:

An employee conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct; typically referred to as "quid pro quo" sexual harassment.

Or sexual harassment is:

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; often referred to as "hostile environment" sexual harassment.

Sexual harassment can also be very specific conduct outlined under the Clery Act or Violence Against Women Act. These particular acts are considered severe enough in that only one such incident may be considered sexual harassment. The following is a list of conduct that may constitute sexual assault:

In addition to the above, dating violence, domestic violence and stalking as defined here may also constitute sexual harassment.

HOW CAN SOMEONE REPORT?

If someone becomes aware of or witnesses sexual harassment, reports of sex discrimination or sexual harassment can be made to the Title IX Coordinator:

- In person
- By mail
- By telephone

- By email; and/or
 - By other means that results in the Title IX Coordinator receiving the report; for example the site's Title IX Designee (Principal) may facilitate the report and/or any resultant complaint; or reports may be made to any employee in an elementary or secondary school.

*Reports of this nature can be made during non-business hours by phone, email or mail to the office address for the District's Title IX Coordinator (Assistant Superintendent of Human Resources).

Once the Title IX Coordinator, Title IX Designee or other official with authority to take corrective action has received the report of sexual harassment, the District will both offer supportive measures to involved parties and will assist the complainant or the complainant's representative in understanding the grievance process in order to file a formal complaint of sexual harassment. The site personnel are essential in helping to coordinate the provision of supportive measures with the parties due to their more direct access to the parties.

THE FORMAL COMPLAINT

It is important to understand how to file a formal complaint in order to initiate the Title IX complaint process. The formal complaint is a document filed by a complainant or a person who has a legal right to file on the complainant's behalf (like a parent or duly-authorized representative); the complaint can be an electronic submission (such as, an email or submission to an online portal provided for this purpose) which is filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting an investigation; the complaint must include the complainant's physical or digital signature or otherwise indicate the complainant is the person filing the formal complaint.

Upon receipt of a formal Title IX complaint, the District must initiate the complaint procedure and offer ongoing supportive measures to involved parties throughout the grievance procedure and whether or not the complaint is filed formally or withdrawn.

The District provides a webpage for filing a formal Title IX complaint that is accessible any time of day. This can be found at:

<https://www.venturausd.org/HumanResources/ComplaintProcedures/tabid/1580/ItemId/527/Default.aspx>

This is in addition to the avenues otherwise afforded under the District's Uniform Complaint Procedures for filing formal complaints of discrimination and harassment.

WHEN DOES THE DISTRICT HAVE NOTICE?

The District has notice of sexual harassment when sexual harassment or allegations of sexual harassment have come to the attention of: The Title IX Coordinator; A District official who has authority to institute corrective measures on behalf of the District; ***Or to the attention of any elementary or secondary school employee.***

Once the District has notice, contact the site's Title IX Designee or the District Title IX Coordinator for support. The District is to facilitate providing supportive measures to involved parties and ensure that the complainant understands how to file a formal complaint under Title IX in order to initiate the complaint process. A handout is available to ensure complainants are afforded their rights. An administrator or Title IX Designee at the site can facilitate this support and education. A complaint can be filed at the link referenced above.

WHO IS PROTECTED BY TITLE IX?

Any person in the United States who is participating in or attempting to participate in the District's educational programs or activities is protected by Title IX and therefore, can make a complaint or a report can be made on that individual's behalf.

The District's educational programs or activities include locations, events or circumstances over which the District exercises or exercised substantial control over both the respondent and the context in which the sexual harassment occurs or occurred.

Overall, Title IX protects stakeholders from sexual harassment in the District's education programs and activities, including conduct between students, between an employee and a student, and between an employee and another employee.

HOW MUST THE DISTRICT RESPOND?

Once the District knows of sexual harassment or allegations of sexual harassment, the District must respond promptly in a manner that is not deliberately indifferent; in other words the District must respond in a manner that is not clearly unreasonable in light of known circumstances.

The District must treat complainants and respondents equitably by offering supportive measures to the parties and by following a complaint process that complies with Title IX to determine responsibility before any disciplinary sanctions are imposed.

WHAT ARE SUPPORTIVE MEASURES?

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent and are designed to restore or preserve equal access to the District's education programs or activities without unreasonably burdening either party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment:

For example, our District offers the following range of supportive measures: Referrals to Student Support Services, SST's; options to avoid contact or mutual restrictions on contact between the parties, such as seating and class changes, changing student groupings, changes in work locations, leaves of absence, safety plans, safe paths of travel, increased security and monitoring of certain areas of campus to prevent reoccurrence and other similar measures; training and educational materials; and other supports, such as academic supports, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, counseling, health support, mental health supports, and Restorative Justice.

The District Title IX Coordinator and site designees are responsible for promptly coordinating effective and confidential implementation of supportive measures in an equitable manner for the parties such as the types of measures indicated earlier to ensure appropriate support whether or not an affected student chooses to file a formal Title IX complaint. It is important to consider the complainant's wishes as to supportive measures and to inform the complainant that supportive measures are available with or without the filing of a formal Title IX complaint. This support is in addition to separately explaining to the complainant the process for filing a formal Title IX complaint.

INFORMAL RESOLUTIONS

Once a formal complaint is filed, the parties have notice of the allegations and the informal resolution process, and prior to a final determination regarding responsibility, the parties can agree voluntarily and in writing to an informal resolution such as mediation or restorative justice that does not involve a full

investigation and determination.* Informal resolutions will be offered and attempted within the grievance process timeframe, generally considered to be 60 days.

Parties cannot be coerced to participate in informal resolutions. It is important to note that any party can withdraw from the informal resolution process and resume the grievance process. Records of the informal resolution result and related consequences will be maintained and can be shared.

*This informal resolution option does not apply to allegations that involve an employee sexually harassing a student.

EMERGENCY REMOVALS

If after an individualized safety and risk analysis is performed, it is determined that there is an immediate threat to the physical health or safety of any student or other individual arising from the sexual harassment allegations, a removal of the respondent may be justified during the pendency of the grievance process.

In such an instance, the respondent must be provided with notice and an opportunity to challenge the decision immediately following the removal.

Separately, the District may place a non-student employee respondent on administrative leave during the pendency of the grievance process.

These removals may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 or the Rehabilitation Act of 1973 or under the Americans with Disabilities Education Act.

THE COMPLAINT PROCEDURE

The complaint procedure provides due process and fundamentally fair procedures to adjudicate the allegations of sexual harassment. Parties are entitled to a fair and equitable process that applies equally to both parties; the District must follow the TIX complaint process and investigative process, including appeals and informal resolutions. Respondents are not subject to disciplinary sanctions before the conclusion of the grievance process.

For example, the process requires that both parties receive notice regarding the sexual harassment allegations intended for investigation, and any new allegations that arise for investigation, as well as opportunities for both parties to inspect and review the evidence during the investigation, to submit questions for the parties, to receive a written determination regarding responsibility and an opportunity to appeal the determination regarding responsibility.

Filing a formal complaint by the alleged victim, by their legal representative or by the Title IX Coordinator and going through the complaint procedure to a final determination is the only way that formal discipline can be imposed on the respondent under the Title IX rule. If the conduct does not rise to the level of a Title IX investigation, then other student or employee-related discipline protocols may be followed.

Overall, the complaint procedure is to be completed in a prompt time frame (generally considered by District policy guidance to be 60 days) and will only be extended for good cause. Any extension of time frames and the rationale will be provided in writing to the parties. Examples of good cause are the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. To begin the complaint procedure, the complainant, the complainant's representative or the Title IX Coordinator must file a complaint requesting the complaint procedure be initiated. A link for filing a formal complaint can be found on the district website at: <https://www.venturausd.org/HumanResources/ComplaintProcedures/tabid/1580/ItemId/527/Default.aspx>

COMPLAINT PROCESS PROTECTIONS

There are important protections afforded to the parties throughout the complaint process. For example, each party must:

- Receive **notice** of the complaint with sufficient details known at the time (such as, identities of parties involved, conduct that would constitute sexual harassment, date and location of incidents) of the alleged harassment; Receive notice of any additional allegations that arise during the investigation;
- Be provided a statement that each party has the right to an **advisor** of their choice, who may be but is not required to be, an attorney, and who can accompany them to any related meeting;
 - Be informed that the respondent is **presumed not responsible** for the alleged conduct and that the determination regarding responsibility is made at the conclusion of the complaint process with the burden of proof falling on the District; and be made aware of any statement from District policy that parties must not knowingly make false statements if such a statement exists;

Additionally, schools must not prevent the parties from discussing the allegations per first amendment protections or from gathering and presenting relevant evidence; schools must give both parties equal opportunity to offer relevant evidence gathered, including presenting witnesses and expert witnesses, and to review and respond to evidence gathered that is directly related to the allegations overall; the parties involved in the investigation have 10 days to do this review and respond with any additional questions or evidence to be considered; as part of this, the District must also give each party an equal opportunity to submit questions to ask of the other parties; most questions regarding sexual history are generally prohibited; Otherwise, the District will recognize all legally recognized privileges, such as attorney/client and patient/client privilege unless the party provides voluntary, written consent to use the information.

During the investigation the parties must be given advance notice of the date/time/location/participants/ and purpose with sufficient time to prepare when being asked to participate in an interview or meeting; all parties must be informed of the range of remedies and or disciplinary sanctions, the standard of proof which is considered the preponderance of the evidence standard or “more likely than not” that it occurred/the right to an appeal, and what supportive measures are available.

Then the investigative report, which fairly summarizes relevant evidence, is circulated to the parties at the same time; at which point the parties have 10 more days for reviewing the investigative report and providing a written response before the final determination is made by a separate decision-maker.

THE FINAL DETERMINATION

The person deciding the complaint or making a determination regarding responsibility cannot be the person who received the complaint or who investigated it, including the Title IX Coordinator. The Human Resources Department will facilitate assignment of a decision-maker.

The decision-maker will consider:

- And review any written relevant questions the parties submit in the 10 days leading up to the final determination; Issues of relevance in relation to questions and evidence (which will be explained more later);
- Consider that questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed

- the conduct alleged or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to respondent and are offered to prove consent;
- And will provide each parties with the answers obtained to the follow-ups requested and will explain to the party proposing a question any decision to exclude a question as not relevant.
 - The decision-maker must provide the final determination of responsibility simultaneously to the parties, including:
 - Identifying the allegations potentially constituting sexual harassment;
 - Procedural steps taken from receipt of the formal complaint through determination, notices given to parties, interviews, site visits, methods to gather data;
 - Findings of fact;
 - Conclusions regarding the application of the District's disciplinary policy based on the facts;
 - A statement of and rationale for the result of each allegation, determination of responsibility, disciplinary sanctions imposed, remedies to restore and or preserve equal access to the complainant; procedures and bases for appeals; document the basis for the District's conclusion that it's response was not deliberately indifferent and that it has taken measures designed to restore or preserve equal access to the District's educational programs and activities. When considering relevance of evidence and questions during the grievance process, the following definitions will provide guidance: California Evidence Code § 210 which says that evidence is relevant when it has any tendency in reason to make the fact that it is offered to prove or disprove either more or less probable; Black's Law Dictionary which says that the evidence applies to the matter in question; or affords something to the purpose; or the Merriam Webster Dictionary definition, which says that relevance is having significant and demonstrable bearing on the matter at hand.

BIAS AND CONFLICTS OF INTEREST

Any individual designated as a Title IX Coordinator, an investigator, a decision-maker, or any person designated to facilitate an informal resolution process, may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. They must serve their role in an impartial manner, avoiding prejudgment of the facts at issue. Evidence must be evaluated objectively; personnel handling the complaint process must be free from bias and conflicts of interest and must presume the respondent is not responsible for the alleged conduct at the beginning of the investigation process.

Bias is a preference for or against something or someone; it can be positive or negative; it can be conscious or unconscious. It is important to be reflective and consider one's preconceived notions. Bias can influence our decisions and create a conflict of interest. Holding multiple roles in a Title IX investigation can create a conflict of interest, and is therefore prohibited. Roles designated under Title IX are clearly defined, have specific requirements and must be performed as indicated with neutrality to ensure equitable outcomes and fairness for all parties. Title IX determinations can be appealed on the basis that the designated person has a bias or conflict of interest, among other reasons. Following Title IX complaint processes with fidelity and the differentiated roles within them, will reduce conflicts of interest.

It is important to recognize the role bias can play separately in our actions and the decisions we make and to minimize the influence of bias in the Title IX complaint process. We can check our first impressions by reading about bias, taking trainings addressing awareness of bias, by consulting with and sharing ideas with others of various backgrounds to enhance our perspectives, and by studying and implementing best practices involving due process in investigations to ensure neutrality.

REMEDIES

Remedies are designed to restore or preserve equal access to the District's educational programs or activities. Remedies may include supportive measures as previously reviewed, however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent or accused.

Besides supportive measures previously discussed, remedies may include provision of:

- Parent/student conference(s);
- Recovery Time Think Sheets; Behavior Contracts;
- Reflective Behavior Journaling; Social Emotional Learning Programs; Warnings;
- Detention;
- And formal discipline, such as suspension and expulsion. Or dismissal.

APPEALS

Appeals by either party of the decision to dismiss a complaint or of the final determination of the Title IX investigation must be submitted in writing to the District's Title IX Coordinator within 30 days of the District's final determination and will be addressed with a different neutral decision-maker. Appeal requests must include the rationale for the appeal. Appeals can be made based on the following alleged grounds:

- Procedural irregularity in the Title IX complaint process affected the outcome;
- Newly discovered evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could affect the outcome; or due to a bias or conflict of interest by the Title IX Coordinator, investigator, or decision-maker that affected the outcome.

The appeal decision will be issued in no later than 60 days from receipt of a request for the appeal that meets the required elements of an appeal request, unless there is good cause to extend the timeline.

The appeal will be decided by a decision-maker that is not the same person as the decision-maker in the underlying matter regarding responsibility or dismissal, the investigator, or the Title IX Coordinator.

Each party will be given a reasonable and equal opportunity to submit a written statement in support of, or challenging, the outcome of the original determination.

A final written decision will be issued simultaneously to the parties, describing the result of the appeal and the rationale for the result.

CONSTITUTIONAL PROTECTIONS

The Office for Civil Rights or OCR oversees Title IX. OCR does not enforce the first amendment, but is governed by it and thus applies this lens when analyzing a District's efforts under Title IX. In looking at how Districts regulate the conduct of students and employees, OCR would look to ensure that schools do so in a manner that comports with one's constitutional rights.

Title IX is intended to protect stakeholders from sex discrimination, not to regulate the content of speech per the regulations; the subjective offensiveness of speech is not enough to meet the bar for subjective offensiveness and unwelcomeness under OCR's standard or definitions of sexual harassment that would meet the bar of either a hostile environment, quid pro quo or a serious sexual offense. However, other District policies may be involved and have recourses available.

It also would not be considered retaliation by OCR if the accused or respondent engages in protected speech around the allegations of sexual harassment.

The District may not restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution and may not deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments.

DISMISSING A TITLE IX COMPLAINT

A Title IX complaint will be dismissed if the conduct alleged would not constitute sexual harassment as defined earlier and in the regulation, Section 106.30;

- if it did not occur in the District’s education programs or activities, or did not occur in the United States;
- If the complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the complaint or any allegations;
- If the respondent is no longer enrolled in or employed by the District; or
- If circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein;

However, the conduct may be separately addressed under the District’s policy otherwise if warranted.

The District will send a written notice simultaneously to the parties of the dismissal with the reasons specified. The decision to dismiss the complaint under Title IX may be appealed by the parties.

TITLE IX ROLES

Each District site must designate one or more Title IX designees.

The Title IX Designee at a site will ensure that reports of sex discrimination or sexual harassment are brought to the attention of those who can take corrective action and to the Title IX Coordinator. The designee can do this by sharing information about individuals’ rights under Title IX, including the complaint process and facilitating filing a complaint. In the interim, the Title IX Designee facilitates ensuring provision of supportive measures to the parties whether or not a formal complaint is filed.

The District Title IX Coordinator provides policy guidance and training, and the availability of and compliance with the complaint process under Title IX.

Title IX investigators will facilitate the investigation and complete the findings of facts report. The Title IX decision-maker will make the final determination regarding responsibility.

A neutral individual will oversee any appeal requests.

RETALIATION PROTECTIONS

Title IX and the District has explicit rules against retaliation:

Specifically, no District personnel or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under this law.

Intimidation, threats, coercion, or discrimination, including charges against an individual for District policy violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances, for the purpose of interfering with any right secured by Title IX constitutes retaliation.

The District must keep confidential the identity of any individual who has made a report or complaint, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Education Rights and Privacy Act statute or as required by law, or to carry out the purposes of the Title IX regulations. Complaints alleging retaliation may be filed.

The exercise of free speech under this law does not constitute retaliation.

If the District charges an individual with making a materially false statement in bad faith, that does not constitute retaliation. A determination regarding responsibility alone at the conclusion of an investigation will not be sufficient to conclude that any party made a materially false statement in bad faith.

RECORDKEEPING – 7 YEARS

The District must maintain records related to sexual harassment investigations for 7 years. Those records constitute:

- Sexual harassment investigations and determinations (the files may be housed in the administrator's file; the District's incident reporting system, the Human Resources Department or the Office of General Counsel or with other investigative personnel and offices depending on who conducted the investigation);
- Supportive measures provided to the parties and if none are provided then documentation of the reasonable rationale for not providing them should be noted;
- Disciplinary sanctions imposed
- Remedies to the complainant
- Appeals and outcomes (maintained by the Human Resources Department or Office of the General Counsel or other investigative personnel and offices depending); and finally
- The District posts its Title IX training materials on the Ventura Unified School District website for public access.

CONCLUSION

For more information on the Title IX law itself, the regulations are available by accessing the link shown here. <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

For additional information and resources related to Title IX, employee-related harassment and discrimination matters and recourses please contact the VUSD's Department of Certificated Human Resources at (805) 641-5000 ext. 1150. For other Title IX related concerns please email HR at: titleix@venturausd.org.