

OCR Title IX Webinar: Regional Centers and School Consortia

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<https://youtu.be/bOprfu8Ixrg>

The U.S. Department of Education's Office for Civil Rights, or OCR, is a federal law enforcement agency tasked enforcing certain laws that protect the civil rights of students in schools that receive federal funding. One of these laws is Title IX of the Education Amendments of 1972, which we commonly refer to as Title IX.

Schools, school districts, colleges and universities, along with other similar entities that receive federal funds must comply with Title IX. Title IX prohibits these recipients of federal funds—which we'll refer to as recipients in this video—from discriminating on the basis of sex. That includes the requirement that recipients appropriately receive and respond to allegations of sexual harassment, and adjudicate those allegations before deciding whether to discipline students.

On May 6, 2020, the Department announced new Title IX regulations that create a consistent, reliable, and effective means of securing non-discrimination in schools, while also protecting due process and free speech rights. The regulations became effective on August 14, 2020. This is the first time in history that protections against sexual harassment have been enshrined into federal education regulations.

The purpose of this video is to discuss how schools may work together to meet certain responsibilities under the new Title IX regulations.

Since different schools may confront similar issues as they implement these provisions, it will be helpful, in many instances, to use innovative measures to respond to those issues. One possibility that is expressly contemplated by the preamble to the new Title IX regulations is a regional center that has as its members individual recipients, or, alternatively, the establishment of a consortium of schools that join together in order to efficiently and effectively implement the requirements of the Title IX regulations. This is similar to how schools and school districts often use regional centers or form consortia to create operational efficiencies and maximize resources in other contexts.

When drafting the final Title IX regulations, the Department considered comments from individuals who suggested that smaller schools or schools with resource challenges might establish or join these types of entities in order to make their joint processes more effective and efficient.

The final Title IX regulations reflect the Department's consideration of these comments. While some of the duties under the new regulations cannot be delegated to outside entities, schools may delegate a substantial number of their responsibilities to regional centers, or join together to form consortiums to jointly meet the requirements of the new regulation.

In this video, we'll look at a few requirements as stated in the Title IX regulations, and possible ways that regional centers and consortia can help schools meet these requirements.

First, let's address how schools can meet their duties to communicate about their Title IX Coordinator and non-discrimination policy under the new Title IX regulations.

Under the regulations, recipients must disseminate their non-discrimination policy to certain members of their school community, but the Title IX regulations do not prevent this from occurring through a joint communication that is issued by a consortium. A consortium of recipients, for example, may work together to jointly host and manage a Title IX webpage, which contains a non-discrimination policy that meets the requirements of the regulation. Separately, the regulations permit each school within a consortium to jointly employ a Title IX Coordinator, and to publish written grievance procedures that satisfy the new Title IX regulation, such as by way of hosting these grievance procedures on their shared website. And, while each member school would have a responsibility to ensure that they are fully implementing the adopted policies and procedures, both the consortium and the individual member schools would be responsible for ensuring compliance with Title IX.

Next, let's talk about how under the new Title IX regulations, recipients are responsible for responding properly to allegations of sexual harassment, and for following a proper grievance process when it receives a formal complaint of sexual harassment. As part of the grievance process, the parties to a formal complaint are entitled to written notices, relevant evidence, and other rights as the process moves forward. Once a decision-maker has issued a written determination regarding the formal complaint, and any appeal has occurred, the school must remedy the sexual harassment, and may discipline a responsible party, as appropriate. These are just some of the features of the new Title IX regulations.

Under the new Title IX regulations, it is permissible for a recipient to delegate many of the functions required by the Title IX regulations to an outside entity or a Regional Center, or for recipients to join together to form a consortium of schools to meet these requirements. Of course, each recipient continues to bear responsibility for ensuring compliance with civil rights laws, even when certain tasks are delegated to an outside entity.

Of course, the Title IX regulations require that the parties to a formal complaint of sexual harassment are provided with certain notices, evidence, and documents prior to an adjudication on the substantive allegation of sexual harassment. In order to meet these requirements, a recipient could utilize an entity such as a regional center to provide these types of materials to the parties on behalf of the recipient, again recognizing that the recipient must ensure compliance with Title IX.

The new regulations also ensure that, at the postsecondary level, a live hearing must generally occur as part of the adjudication process. While a live hearing is not required at the elementary and secondary level, some schools may choose to opt into this process. The new Title IX regulations permit recipients to delegate administration of the hearing processes required or

permitted in the regulations to regional centers or another outside entity, so long as the recipient itself remains responsible for ensuring that Title IX is followed.

Next, let's discuss how a regional center or consortium supports the recipient through the hearing and adjudication processes.

As part of delegating the conduct of the hearing processes, for instance, recipients may also delegate, for instance, the decision-making process surrounding a finding regarding responsibility. That means that a decision-maker retained by the regional center or consortium could make a finding on the question of whether the respondent—the person accused of sexual harassment—is in fact responsible for the alleged misconduct.

Recipients can also share responsibility during the adjudication process. For instance, a decision-maker retained by a regional center could make a finding on the issue of responsibility, while leaving to the recipient the ultimate decision on the appropriate specific discipline for a student who is found responsible. In this way, the Title IX regulations provide flexibility to use multiple decision-makers in any sexual harassment grievance process, so long as the written determination at the end of the process is provided to the parties in a manner consistent with the new regulations.

These are just a few examples of how the recipient can work with outside entities in order to facilitate compliance with the new Title IX regulations.

We hope this video has been helpful in providing you information about how regional centers and other consortia may be useful for schools to help implement the new Title IX regulations. The Department is prepared to provide additional technical assistance for recipients with questions about pursuing regional center models. If you have questions or would like additional information or technical assistance, you may contact OCR's Outreach, Prevention, Education and Non-discrimination (OPEN) Center at T9questions@ed.gov. Thank you for your help in ensuring that our educational system is safe for all students.