



Assigning Roles Under New Title IX Requirements

Effective August 14, 2020, districts must implement OCR's new Title IX regulations, which create novel roles for school personnel. Districts need to decide who will be assigned to each role and ensure they are properly [trained](#).

Title IX Coordinator: This is not a new position, but the Title IX Coordinator's responsibilities have changed. A school district's Title IX Coordinator is specifically identified in its DIA(Exhibit), FB(Exhibit), and FFH(Exhibit). Make sure this information is updated in policy, handbooks, and online anytime a new individual assumes the responsibilities of the Title IX Coordinator. In most school districts, the Title IX Coordinator is the Superintendent, an Assistant Superintendent, or other Central Administrator. Given the new duties of the Title IX Coordinator, school districts may wish to consider assigning this role to individuals who have substantial time to commit to individual matters. Under the new regulations, anytime there is a report of sexual harassment in the school district, the Title IX Coordinator must promptly: contact all complainants to discuss the availability of "supportive measures" (e.g., counseling, schedule change, increased supervision); consider a complainant's wishes with respect to supportive measures; inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and explain the process for filing a formal complaint. 34 C.F.R. §106.30(a), .44(a). The Title IX Coordinator may file a formal complaint on behalf of an individual and trigger an investigation, even if the alleged victim does not file a formal complaint. The Title IX Coordinator may also be involved in dismissing complaints that do not involve sexual harassment, as now defined under the new regulations. All of these actions will require [documentation](#). The Title IX Coordinator is responsible for posting all sexual harassment training materials to the district's website. The Title IX Coordinator is also responsible for ensuring proper record keeping: the preservation of all documents related to alleged sexual harassment for 7 years. 34 C.F.R. §106.45(b)(10). Many of these tasks can still be delegated, but the Title IX Coordinator must oversee the process.

Investigators: This is a new role. The investigator, who can be the Title IX Coordinator, must investigate formal complaints of sexual harassment and produce a written investigative report. The investigator must provide written notice to parties of the date, time, participants, purpose, and location of any interview, allowing sufficient time to prepare. The investigative report must be shared with the parties at least 10 days before any determination of responsibility (i.e., whether the respondent engaged in sexual harassment). Historically, school districts have used assistant principals to investigate matters. If [properly trained](#) in the new requirements for Title IX investigations, APs could be used in this role. Some districts may prefer to assign the role of Title IX investigator to another school administrator or outside source (e.g., law firm). It is advisable to train more than one individual as a Title IX investigator. Depending on the nature of the claims, an investigation could require significant time commitments. All investigators must be [trained](#) on: impartial investigations; standards of evidence; how to equitably and meaningfully include both parties in the process including inculpatory and exculpatory evidence; how to write an investigative report; the role of expert witnesses; legal privileges; and more.

Decision-makers: This is also a new role. The decision-maker cannot be the investigator or the Title IX Coordinator, at least not on the same complaint. So, a school district will have yet another individual involved in a sexual harassment complaint. The roles of investigator and decision-maker could switch from complaint to complaint, assuming the individuals are [properly trained](#) to perform both roles. The decision-maker will review the investigative report from the investigator and “determine responsibility” (i.e., whether or not sexual harassment occurred). In the post-secondary setting, a live hearing will be used to determine responsibility, but live hearings are not required in the K12 setting. We do not recommend live hearings in the K12 setting, as they are designed to provide for confrontation and cross-examination of parties and witnesses, which may not be appropriate in situations involving minor students. Ultimately, the decision-maker must issue a written decision addressing the allegations, the procedural steps taken, findings of fact, application of the code of conduct to the facts, and the rationale as to each allegation of the determination of responsibility, disciplinary actions, and whether remedies to restore or preserve equal access will be provided. So, a decision-maker will also need significant time to dedicate to writing the decision and justifying the decisions made in the process. Ideally, the decision-maker will be a principal or central administrator. It makes sense for the decision-maker to be a higher-level employee than the investigator to maintain the appearance of impartiality and independence. It is advisable to have more than one individual trained to serve as a Title IX decision-maker. All decision-makers must have [training](#) on objectivity and independent analysis; impartiality and how to decide what evidence is relevant; weighing evidence based upon different standards of proof; drafting written decisions consistent with regulatory mandates; determining appropriate disciplinary sanctions and supportive measures; and providing appeal rights. In case of an appeal, there will be an additional appellate decision-maker, who still cannot be the investigator or Title IX Coordinator.

Facilitators: A facilitator is an unbiased individual who can attempt to facilitate a resolution between the parties. This, too, is a new concept under the Title IX regulations akin to a mediator. Facilitation is completely voluntary; parties cannot be required to engage in this process. The facilitator cannot be the investigator or decision-maker. Administrators or other employees who are skilled at conflict resolution and school counselors would make good candidates for this role. Facilitators must be [trained](#) on best practices for reaching compromise and voluntary resolution.

Advisors: An advisor is an individual who can assist a party in the investigation and grievance processes. This may be an adult of the student’s (parents’) choosing, including a parent or attorney. While a school district may establish restrictions regarding the extent to which an advisor may participate, a party may be accompanied by an advisor during any meeting or proceeding in the investigation or grievance process. 34 C.F.R. §106.45(b)(5)(iv). In school districts that opt to have live hearings for Title IX sexual harassment complaints, a party is entitled to have an advisor of his/her own choosing at the hearing. School districts that do not provide live hearings will still need to [develop written restrictions](#) on the role of advisors who accompany parties to meetings in the grievance process, including interviews.