



Brigham Young University–Hawaii  
Office of Compliance & Ethics Research Memo  
Title IX of the Education Amendments of 1972

Law/Act:	Title IX of the Education Amendments of 1972	
U.S. Code Citation:	<a href="#">20 U.S.C. §§ 1681–1688, 1092(f)</a>	
Code of Federal Regulations Citation:	<a href="#">34 C.F.R. pt. 106, §§ 100.6–100.11</a>	
Responsible Regulator:	Department of Education	
BYU–Hawaii Responsible Officer:	Title IX Coordinator	
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## I. PURPOSE

Title IX is intended to prevent sex discrimination in any federally funded education program or activity.<sup>1</sup>

## II. HISTORY

Title IX was signed in June 1972, as part of the Education Amendments of 1972, and took effect about a week later.<sup>2</sup> In June 1975, the U.S. Department of Health, Education, and Welfare (the predecessor to the Department of Education) issued regulations enforcing Title IX.<sup>3</sup> Subsequent federal laws and guidance have been issued in relation to Title IX compliance. For example, the Department of Education has issued “Dear Colleague” letters regarding Title IX compliance in athletics,<sup>4</sup> the relationship between bullying and sexual harassment,<sup>5</sup> responses to sexual crime and violence,<sup>6</sup> and the rights of pregnant and parenting students.<sup>7</sup> The Violence Against Women Reauthorization Act of 2013 imposed new requirements for institutional policies and institutional responses to allegations of sexual assault and other sex-based crimes.<sup>8</sup>

## III. APPLICABILITY TO BYU–HAWAII

All postsecondary institutions that receive federal financial assistance must comply with Title IX.<sup>9</sup> Title IX’s nondiscrimination requirements apply to all of a school’s educational programs and activities, regardless of whether those programs and activities occur on campus.<sup>10</sup> Because BYU–Hawaii receives

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<sup>1</sup> 20 U.S.C. § 1681(a) (2016).

<sup>2</sup> Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235; *id.* § 2(c)(1).

<sup>3</sup> Nondiscrimination on the Basis of Sex under Federally Assisted Education Programs and Activities, 40 Fed. Reg. 24,128, 24,128–45 (1975). In 2002, Congress passed a joint resolution renaming Title IX the “Patsy Takemoto Mink Equal Opportunity in Education Act” in honor of one of Title IX’s original sponsors. Joint Resolution Recognizing the Contributions of Patsy Takemoto Mink, Pub. L. No. 107-255, 116 Stat. 1734 (2002).

<sup>4</sup> Letter from Gerald Reynolds, Assistant Sec’y for Civil Rights, Office for Civil Rights, U.S. Dep’t of Educ. (July 11, 2003), available at <http://www2.ed.gov/about/offices/list/ocr/title9guidanceFinal.pdf>.

<sup>5</sup> Letter from Russlynn Ali, Assistant Sec’y for Civil Rights, Office for Civil Rights, U.S. Dep’t of Educ. (Oct. 26, 2010), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

<sup>6</sup> Letter from Russlynn Ali, Assistant Sec’y for Civil Rights, Office for Civil Rights, U.S. Dep’t of Educ. (Apr. 4, 2011), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

<sup>7</sup> Letter from Seth Galanter, Acting Assistant Sec’y for Civil Rights, Office for Civil Rights, U.S. Dep’t of Educ. (June 25, 2013), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201306-title-ix.pdf>.

<sup>8</sup> Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54.

<sup>9</sup> 20 U.S.C. § 1687 (2016).

<sup>10</sup> Letter from Russlynn Ali, *supra* note 6, at 3–4 (stating that Title IX “protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school,” wherever they are held).



student financial aid and other federal funding, BYU–Hawaii is required to comply with Title IX requirements.<sup>11</sup>

#### IV. REQUIREMENTS

Title IX requires that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”<sup>12</sup> Title IX regulations address housing, access to academic programs, academic counseling, financial assistance, employment assistance for students, student health and insurance benefits, marital or parental status, athletics, textbooks, and standards for measuring progress in physical education classes.<sup>13</sup> Title IX also prohibits sexual harassment, sexual violence, and discrimination on the basis of sex in employment at educational institutions.<sup>14</sup> Retaliation against individuals who report sex discrimination is likewise prohibited by Title IX, even when the individual making the report is not the direct target of discrimination.<sup>15</sup>

##### A. Exemptions

Title IX does not apply to the following entities and situations:

- Educational institutions controlled by a religious organization whose religious tenets are inconsistent with Title IX<sup>16</sup>
- Educational institutions whose primary purpose is training individuals for military services or the merchant marine<sup>17</sup>
- Public institutions of undergraduate higher education that traditionally admit only students of one sex<sup>18</sup>
- Social fraternities or sororities of primarily higher education students<sup>19</sup>
- YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls, and voluntary youth service organizations that traditionally have limited membership to persons of one sex<sup>20</sup>

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<sup>11</sup> 20 U.S.C. § 1687.

<sup>12</sup> *Id.* § 1681(a). Title IX also prohibits discrimination against blind or severely visually impaired individuals in regards to admission to a course of study. *Id.* § 1684.

<sup>13</sup> 34 C.F.R. §§ 106.31–.43 (2017).

<sup>14</sup> *Id.* §§ 106.51–.61; Letter from Russlyn Ali, *supra* note 6, at 1. Title VII of the Civil Rights Act also prohibits sex discrimination in employment. 42 U.S.C. § 2000e-2(b).

<sup>15</sup> *Jackson v. Birmingham Board of Educ.*, 544 U.S. 167, 171 (2005) (holding that “Title IX’s private right of action encompasses claims of retaliation for complaints about sex discrimination” in a case where a public school teacher complained about sex discrimination in high school athletics); *see also* Letter from Russlyn Ali, *supra* note 6, at 16 (stating that “schools must have policies and procedures in place to protect against retaliatory harassment”).

<sup>16</sup> 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a). An institution may claim this exemption by submitting a written statement from the institution’s president. 34 C.F.R. § 106.12(b).

<sup>17</sup> 20 U.S.C. § 1681(a)(4); 34 C.F.R. § 106.13.

<sup>18</sup> 20 U.S.C. § 1681(a)(5); 34 C.F.R. § 106.15(e).

<sup>19</sup> 20 U.S.C. § 1681(a)(6); 34 C.F.R. § 106.14(a).

<sup>20</sup> 20 U.S.C. § 1681(a)(6); 34 C.F.R. § 106.14(b)–(c).



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- Boys State, Boys Nation, Girls State, or Girls Nation conferences<sup>21</sup>
- Father-son or mother-daughter activities at educational institutions<sup>22</sup>
- Scholarships and financial aid to beauty pageant awardees<sup>23</sup>

## **B. Institution-Wide Requirements**

Under Title IX, institutions of higher education must comply with several main requirements:

1. Designate a Title IX coordinator to coordinate and oversee compliance with Title IX.<sup>24</sup>
2. Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints of sex discrimination.<sup>25</sup>
3. Disseminate a nondiscrimination policy.<sup>26</sup>
4. Provide training to students and employees to promote awareness of rape, acquaintance rape, domestic violence, sexual assault, and stalking.<sup>27</sup> (For the sake of brevity, this specific set of crimes is referred to in this memo as “campus sex crimes.”)

Institutions must evaluate their programs and take action to remedy and eliminate any discrimination that has occurred.<sup>28</sup> If an institution knows or reasonably should know about student-on-student harassment that creates a hostile environment, the institution must take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.<sup>29</sup> Efforts to prevent future sex discrimination must include policies against retaliation.<sup>30</sup>

### **1. Title IX Coordinator**

Institutions must designate a Title IX coordinator to oversee all Title IX complaints and investigations and address Title IX problems that arise.<sup>31</sup> Additional deputy or supporting coordinators are permitted, but a single coordinator must be given final oversight responsibility and a title that reflects this status.<sup>32</sup> The institution must publish the Title IX coordinator’s contact information,<sup>33</sup> and the coordinator should be

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<sup>21</sup> 20 U.S.C. § 1681(a)(7).

<sup>22</sup> *Id.* § 1681(a)(8) (noting that “opportunities for reasonably comparable activities shall be provided for students of the other sex”).

<sup>23</sup> *Id.* § 1681(a)(9) (applying exception “so long as such pageant is in compliance with other nondiscrimination provisions of Federal law”).

<sup>24</sup> 34 C.F.R. § 106.8(a).

<sup>25</sup> *Id.* § 106.8(b).

<sup>26</sup> *Id.* § 106.9(a).

<sup>27</sup> 20 U.S.C. § 1092(f)(8)(B)(i).

<sup>28</sup> 34 C.F.R. § 106.3(a), (c).

<sup>29</sup> Letter from Russlyn Ali, *supra* note 6, at 4.

<sup>30</sup> *Id.* at 16.

<sup>31</sup> 34 C.F.R. § 106.8(a); Letter from Russlyn Ali, *supra* note 6, at 7.

<sup>32</sup> Letter from Russlyn Ali, *supra* note 6, at 7. If a school “designates more than one Title IX coordinator, the notice [to students and employees] should describe each coordinator’s responsibilities.” *Id.*

<sup>33</sup> 34 C.F.R. § 106.8(a).



available to meet with students.<sup>34</sup> The Title IX coordinator is expected to keep a log of all Title IX complaints.<sup>35</sup>

## 2. Grievance Procedures

An institution's procedures for resolving complaints of sex discrimination must apply to both students and employees.<sup>36</sup> Title IX does not require separate grievance procedures for complaints of sexual harassment and other types of discrimination complaints.<sup>37</sup> All complaints of sex discrimination must receive prompt and equitable responses.<sup>38</sup> Institutions must establish procedures for institutional disciplinary action regarding campus sex crimes.<sup>39</sup> The proceedings must achieve the following<sup>40</sup>:

- Be prompt, fair, and impartial
- Be conducted by officials who receive annual training on campus sex crimes and the investigation and hearing process
- Provide equal opportunities to accusers and accused to present witnesses and evidence during hearings and to have an advisor of their choice
- Simultaneously inform the accuser and the accused of the proceeding's outcome, any changes to the outcome before it becomes final, and the date when results become final

An investigation should not be initiated without the complainant's consent.<sup>41</sup> If the complainant requests confidentiality or that no investigation take place, the school should take as much action as possible while remaining consistent with the complainant's requests.<sup>42</sup> Complainants should be informed of their options to file a criminal complaint, to be assisted by campus authorities in notifying police, or to decline to notify police.<sup>43</sup> Institutions should not dissuade complainants from filing criminal complaints.<sup>44</sup>

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<sup>34</sup> Letter from Russlyn Ali, *supra* note 6, at 7.

<sup>35</sup> Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 62 Fed. Reg. 12,034, 12,045 (Mar. 13, 1997) ("Coordination of recordkeeping—for instance, in a confidential log maintained by the Title IX coordinator—will also ensure that the school can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them").

<sup>36</sup> 34 C.F.R. § 106.8(b).

<sup>37</sup> Letter from Russlyn Ali, *supra* note 6, at 8.

<sup>38</sup> *Id.* at 8; *see also* 34 C.F.R. § 106.8(b) (outlining recipient complaint procedure).

<sup>39</sup> 20 U.S.C. § 1092(f)(8)(B)(iv) (2016); 34 C.F.R. § 106.8(b); Letter from Russlyn Ali, *supra* note 6, at 8.

<sup>40</sup> 20 U.S.C. § 1092(f)(8)(B)(iv)(I)–(III); *see* Letter from Russlyn Ali, *supra* note 6, at 8–14 (listing grievance procedures).

<sup>41</sup> Letter from Russlyn Ali, *supra* note 6, at 5. A student's parent must give consent if the student is under age eighteen and does not attend a postsecondary institution. *Id.*

<sup>42</sup> *Id.* at 5. If the complainant requests that his or her name not be disclosed to the accused student, the school should inform the complainant that its ability to respond will be limited. *Id.* A complainant's request for confidentiality may be weighed against the seriousness of the harassment, the complainant's age, other complaints against the accused, and the accused individual's right to receive information about the allegations. *Id.*

<sup>43</sup> 20 U.S.C. § 1092(f)(8)(B)(iii)(III). These options must be addressed in a school's policy. *Id.*

<sup>44</sup> Letter from Russlyn Ali, *supra* note 6, at 10.



The adopted grievance procedures should give a definite time frame within which an investigation will occur, and when the parties should expect to learn of the investigation's outcome.<sup>45</sup> The timeliness of obtaining a resolution depends on the complexity of the investigation and the severity of the harassment.<sup>46</sup> During the investigation, both parties should receive periodic updates.<sup>47</sup> When reaching a decision as part of an investigation, a preponderance of evidence standard must be used.<sup>48</sup>

### 3. Nondiscrimination Policy

Institutions must provide the information listed below to applicants for employment and admission; entities that refer employment and admission applicants to the institution; and students, employees, and professional organizations that have a collective bargaining agreement with the institution<sup>49</sup>:

- The institution does not discriminate on the basis of sex.
- The institution is required by Title IX to not discriminate.
- Nondiscrimination requirements apply to both admission and employment.
- Individuals may contact the Title IX coordinator or the Office of Civil Rights assistant secretary with any questions about the application of Title IX.

Furthermore, institutions must not use or distribute publications that suggest applicants, students, or employees are treated differently on the basis of sex.<sup>50</sup> All publications must be distributed without sex discrimination, and the institution must require all recruitment representatives to follow the nondiscrimination policy.<sup>51</sup>

### 4. Training

Institutions must conduct education programs to promote awareness of campus sex crimes.<sup>52</sup> These programs must be in the form of primary prevention and awareness programs for all incoming students and new employees, and in the form of ongoing prevention and awareness campaigns for students and faculty.<sup>53</sup> Both the primary programs and ongoing campaigns must contain the following information<sup>54</sup>:

- A statement that the institution prohibits campus sex crimes
- Definitions of campus sex crimes and of "consent" within the institution's jurisdiction

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<sup>45</sup> *Id.* at 12.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 11. A statement of the standard of evidence that will be used must be included in the institution's published policies. 20 U.S.C. § 1092(f)(8)(A)(ii).

<sup>49</sup> 34 C.F.R. § 106.9(a)(1) (2017). The listed notifications must be included in all announcements, bulletins, catalogues, and application forms provided to individuals required to receive nondiscrimination notifications. *Id.* § 106.9(b)(1).

<sup>50</sup> *Id.* § 106.9(b)(2).

<sup>51</sup> *Id.* § 106.9(c).

<sup>52</sup> 20 U.S.C. § 1092(f)(8)(B)(i).

<sup>53</sup> *Id.* § 1092(f)(8)(B)(i)(I)–(II).

<sup>54</sup> *Id.* § 1092(f)(8)(B)(i)–(vii).



- Safe and positive ways for bystanders to intervene to prevent harm and reduce others' risk of being victims of campus sex crimes
- Information on how to recognize warning signs of abusive behavior and avoid potential attacks
- Sanctions and protective measures the institution may impose following disciplinary procedures
- Procedures victims should follow after a campus sex crime has occurred, including written information on preserving evidence, notifying authorities, and victims' rights and the institution's responsibilities regarding protective orders
- The procedures and requirements for institutional disciplinary action, and a statement that disciplinary proceedings will meet these requirements
- Information on how the institution will protect victims' confidentiality and how it will simultaneously protect confidentiality and fulfil requirements to make records publicly available
- Written notification of victims' services available in the community
- Written notification of victims' options for and available assistance in changing academic, living, transportation, and working situations

### **C. Specific Areas of Title IX Compliance**

#### **1. Academic Access**

With the exception of physical education (PE) classes involving contact sports, PE classes grouped according to athletic ability, and choruses grouped according to vocal range, classes are not to be segregated according to sex, and members of both sexes must have equal access to classes.<sup>55</sup> Institutions must ensure that their standards for measuring skill or progress in physical education classes do not have an adverse effect on members of one sex.<sup>56</sup>

#### **2. Academic and Career Counseling**

Academic counselors must not discriminate against students because of their sex.<sup>57</sup> If a class is found to contain a disproportionate amount of individuals of one sex, the institution must verify that this disproportionality is not caused by discrimination by academic counselors.<sup>58</sup>

#### **3. Admissions and Student Recruitment**

Institutions must not discriminate during the admissions process or deny admission on the basis of sex.<sup>59</sup> Institutions may not consider marital or parental status during the admissions process and may not inquire as to a student's marital status prior to admission.<sup>60</sup> Institutions may not discriminate based on

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<sup>55</sup> 34 C.F.R. § 106.34(a)(1)–(2), (4).

<sup>56</sup> *Id.* § 106.43.

<sup>57</sup> *Id.* § 106.36(a).

<sup>58</sup> *Id.* § 106.36(c).

<sup>59</sup> *Id.* § 106.21(a). Admissions discrimination includes giving preference to one person over another because of sex, ranking applicants of each sex separately, and imposing limitations on the number or proportion of applicants of each sex who may be admitted. *Id.* § 106.21(b)(i)–(ii).

<sup>60</sup> *Id.* § 106.21(c).



sex when recruiting students, and they may not recruit primarily or exclusively at schools, or give preference in admission to students from schools, that predominantly admit students of one sex.<sup>61</sup>

#### 4. Aid and Benefits

The amount of financial assistance offered by the institution to students should not be influenced by a student's sex.<sup>62</sup> An institution may provide a scholarship based on sex in accordance with a conditional gift to the university, but this sex-restricted financial aid must not create discrimination based on sex when viewed in the context of all available financial aid.<sup>63</sup> If an institution assists students in finding employment, it must make an effort to avoid sex discrimination in the assistance it provides as well as in assistance provided by any agencies or employers with which it collaborates.<sup>64</sup> Health insurance and any other benefits offered to students must be provided without discrimination on the basis of sex.<sup>65</sup>

#### 5. Athletics

Title IX prohibits discrimination on the basis of sex in interscholastic, intercollegiate, club, and intramural athletics.<sup>66</sup> Institutions may operate separate teams for members of each sex where selection is based upon competitive skill.<sup>67</sup> However, when an institution operates or sponsors a team for members of one sex but not the other, and athletic opportunities for members of that sex have previously been limited, "members of the excluded sex must be allowed to try out for the team offered unless the sport is a contact sport."<sup>68</sup> Institutions are required to provide equal athletic opportunities for members of both sexes.<sup>69</sup> Equality of athletic opportunity is determined by assessing the following factors<sup>70</sup>:

- Level of competition and selection of sports that accommodate the interests and abilities of both sexes
- Provision of equipment and supplies
- Scheduling of games and practice time
- Travel and per diem allowance
- Opportunity to receive coaching and tutoring
- Compensation and assignment of coaches and tutors
- Provision of practice, medical, housing, lockers, dining, and other facilities
- Publicity

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<sup>61</sup> *Id.* § 106.22; *id.* § 106.23(a)–(b) (stating that this prohibition applies only if such recruiting practices "have the effect of discriminating on the basis of sex").

<sup>62</sup> *Id.* § 106.37(a)(1)–(3).

<sup>63</sup> *Id.* § 106.37(b).

<sup>64</sup> *Id.* § 106.38(a)(1)–(2).

<sup>65</sup> *Id.* §§ 106.31(b), 106.39. Title IX does not prohibit "providing any benefit or service which may be used by a different proportion of students of one sex than the other, including family planning services." *Id.* § 106.39.

<sup>66</sup> *Id.* § 106.41(a).

<sup>67</sup> *Id.* § 106.41(b).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* § 106.41(c).

<sup>70</sup> *Id.* § 106.41(c)(1)–(10).





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The Department of Education has issued a policy establishing a three-part test to determine compliance with Title IX requirements for “equal athletic opportunities.”<sup>71</sup> An institution must demonstrate its athletic programs meet at least one of the following three criteria<sup>72</sup>:

1. The intercollegiate-level participation opportunities for male and female students are “substantially proportionate” to male and female full-time undergraduate enrollment.
2. The institution has historically and continually expanded programs for the underrepresented sex.
3. The institution “fully and effectively” accommodates the underrepresented sex’s interests and abilities.

Further guidance from the Department of Education has clarified what constitutes “fully and effectively” accommodating the underrepresented sex.<sup>73</sup> Under this guidance, an institution fails to comply with part three of the test if the following questions can all be answered with “yes” regarding the underrepresented sex<sup>74</sup>:

1. Is there unmet interest in a particular sport?
2. Is there sufficient ability to sustain a team in the sport?
3. Is there a reasonable expectation of competition for the team?

The institution must provide reasonable opportunities for athletic scholarships to be awarded to members of both sexes in proportion to the number of students of each sex participating in intercollegiate sports.<sup>75</sup>

## 6. Employment

Educational institutions may not discriminate on the basis of sex in employment, recruitment, consideration, and selection of full- and part-time employees.<sup>76</sup> Employees must not be segregated or classified in a way that could adversely affect employment status or opportunities on the basis of sex.<sup>77</sup> In addition to not discriminating directly, institutions may not enter into a contract or relationship that

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<sup>71</sup> A Policy Interpretation; Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,413, 71,413–23 (Dec. 11, 1979). This policy was issued in 1979 and was reaffirmed by the Department of Education’s Office for Civil Rights in 1996 and 2003. Letter from Gerald Reynolds, Assistant Sec’y for Civil Rights, Office for Civil Rights, U.S. Dep’t of Educ., 1 (July 11, 2003), available at <https://www2.ed.gov/about/offices/list/ocr/title9guidanceFinal.pdf>.

<sup>72</sup> Letter from Gerald Reynolds, Assistant Sec’y for Civil Rights, Office for Civil Rights, U.S. Dep’t of Educ., 1–2 (July 11, 2003), available at <https://www2.ed.gov/about/offices/list/ocr/title9guidanceFinal.pdf>.

<sup>73</sup> *Id.*

<sup>74</sup> Letter from Russlynn Ali, Assistant Sec’y for Civil Rights, Office for Civil Rights, U.S. Dep’t of Educ., 4 (Apr. 20, 2010), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.pdf>.

<sup>75</sup> 34 C.F.R. § 106.37(c)(1).

<sup>76</sup> *Id.* § 106.51(a)(1).

<sup>77</sup> *Id.* § 106.51(a)(2).





directly or indirectly subjects employees or students to discrimination.<sup>78</sup> Specifically, Title IX's employment nondiscrimination provisions apply to the following:

- employment recruitment, advertising, and application processes;
- hiring, promotion, demotion, transfer, layoffs, and termination;
- consideration for and award of tenure;
- application of nepotism policies;
- compensation;
- job assignments, classifications, and position descriptions;
- collective bargaining agreement terms;
- leaves of absence (e.g., for pregnancy, childbirth, or caring for children or dependents);
- fringe benefits associated with employment;
- selection and financial support for training, conference attendance, or tuition assistance; and
- employer-sponsored activities, including social and recreational activities.<sup>79</sup>

## 7. Housing and Facilities

Title IX allows institutions to provide housing separated by sex.<sup>80</sup> Housing provided by an institution to one sex must be of similar price and quality to housing provided to the other sex.<sup>81</sup> An institution is also allowed to provide separate toilet, shower, and locker room facilities for each sex, but these facilities must also be comparable to each other.<sup>82</sup>

## 8. Marital and Parental Status

Institutions may not discriminate against students because of pregnancy, marital status, or status as parents.<sup>83</sup> Pregnancy and its related conditions must be treated in the same way as a temporary disability when determining what accommodations and benefits will be available to the student.<sup>84</sup> Institutions must make accommodations to ensure pregnant students are treated in the same way as other similarly situated students.<sup>85</sup>

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<sup>78</sup> *Id.* § 106.51(a)(3). Such relationships may include agreements with employment agencies, labor unions, or organizations that administer employee benefits. *Id.*

<sup>79</sup> *Id.* § 106.51(b)(1)–(10).

<sup>80</sup> *Id.* § 106.32(b)(1).

<sup>81</sup> *Id.* § 106.32(b)(2)(i)–(ii).

<sup>82</sup> *Id.* § 106.33.

<sup>83</sup> *Id.* § 106.40(a)–(b).

<sup>84</sup> *Id.* § 106.40(b)(4).

<sup>85</sup> See generally Letter from Seth Galanter, Acting Assistant Sec'y for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ. (June 25, 2013), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201306-title-ix.pdf> (arguing that the nation must do more to help students who are parents graduate from college).



## 9. Sexual Harassment and Sexual Violence

Sexual harassment is a form of sex discrimination prohibited by Title IX and is defined as “unwelcome conduct of a sexual nature.”<sup>86</sup> In order to promote a productive and safe educational environment, such harassment is prohibited under Title IX.<sup>87</sup> Sexual violence is a form of sexual harassment prohibited by Title IX and is defined as “sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol . . . [or] due to an intellectual or other disability.”<sup>88</sup>

While Title IX itself prohibits sexual harassment implicitly by prohibiting all sex discrimination, institutions of higher education are required to comply with explicit requirements regarding sexual harassment and sexual violence as set forth in U.S. Department of Education guidance<sup>89</sup> and section 304 of the Violence Against Women Reauthorization Act of 2013.<sup>90</sup>

Title IX does not require a policy specifically prohibiting sexual harassment and violence.<sup>91</sup> However, a general policy against sex discrimination would not be considered effective if students do not know what constitutes sexual harassment and what conduct is prohibited; a policy should therefore prohibit sexual harassment and violence and give examples of prohibited conduct.<sup>92</sup>

A student or employee who reports to the institution that he or she has been a victim of a campus sex crime must receive a copy of the institution’s Title IX policies and a written explanation of his or her rights and options.<sup>93</sup>

### D. Enforcement

A responsible official of the Department of Education (the secretary or his or her designee) will conduct a “periodic compliance review” of an institution of higher education that receives federal financial assistance in order to determine whether the institution is compliant with the abovementioned requirements.<sup>94</sup>

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<sup>86</sup> Letter from Russlyn Ali, *supra* note 6, at 1, 3. Sexual harassment includes “unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.” *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 1. Sexual violence includes rape, sexual assault, sexual battery, and sexual coercion. *Id.* at 1–2.

<sup>89</sup> See, e.g., *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, U.S. DEP’T OF EDUC. (Jan. 19, 2001), available at

<https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>; Letter from Russlynn Ali, Assistant Sec’y for Civil Rights, Office for Civil Rights, U.S. Dep’t of Educ. (Apr. 4, 2011), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

<sup>90</sup> Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 304, 127 Stat. 54.

<sup>91</sup> Letter from Russlyn Ali, *supra* note 6, at 7.

<sup>92</sup> *Id.*

<sup>93</sup> 20 U.S.C. § 1092(f)(8)(C) (2016).

<sup>94</sup> 34 C.F.R. § 100.7(a) (2016); see *id.* § 100.13(a), (c) (defining “Department” and “responsible Department official”); *id.* § 106.71 (stating that procedural provisions relevant to nondiscrimination on the basis of sex are incorporated from 34 C.F.R. §§ 100.6–100.11 and 34 C.F.R. pt. 101).



Brigham Young University–Hawaii  
Office of Compliance & Ethics Research Memo  
Title IX of the Education Amendments of 1972

## V. RELATED MEMOS

[Clery Act Annual Security Report and Fire Safety Report](#)

Pregnant and Parenting Students Accommodations

## VI. STAYING UP-TO-DATE

The following websites provide valuable information regarding this law and its applicability.

DOCUMENT/REFERENCE	DESCRIPTION
<a href="#">Association of Title IX Administrators (ATIXA)</a>	Compliance resources for Title IX coordinators and administrators at postsecondary educational institutions
<a href="#">The Top Ten Things We Need to Know About Title IX (That the DCL Didn't Tell Us)</a>	Summary of ten often-overlooked provisions of Title IX
<a href="#">Title IX and Sex Discrimination</a>	Department of Education summary of how sex discrimination fits under Title IX (last updated 1998)
<a href="#">Questions and Answers on Title IX and Sexual Violence</a>	Guidance released by the Department of Education Office for Civil Rights in April 2014