

# Title IX

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Title IX provides that “[n]o 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.” 20 U.S.C. §1681(a).

Over the years, Maynard Nexsen attorneys have represented more than 150 public and private colleges, universities, K-12 schools, and foundations. Jennifer Hollingsworth leads the firm's Title IX team.

## Areas of Consideration

Some key issue areas that dominate Title IX include: recruitment, admissions, financial assistance, athletics, gender-based harassment, treatment of pregnant and parenting students, discipline, and employment.

## Procedural Requirements

Schools receiving federal funding must comply with the procedural requirements outlined in Title IX, which include: (1) disseminating a notice of nondiscrimination; (2) designating at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX; and (3) adopting and publishing grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints.

When a school knows or reasonably should know of possible gender-based discrimination or harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred.

## Risk of Non-Compliance

There is an incentive to invest on the front end to minimize the risk on the back end.

Students, faculty and staff have the option of filing a complaint directly with the Department of Education's Office for Civil Rights ("OCR"). Separately, an action can also be filed under Title IX in federal court with or without having first filed an action with the OCR.

In a federal court action, a litigant may be awarded injunctive relief, monetary damages and attorney fees.

- US Supreme Court ruled that schools are properly held liable in damages only where they are deliberately indifferent to sexual harassment, of which they have actual knowledge that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school. *Davis v. Monroe Country Board of Education*, 526 U.S. 629 (1999).
- There has been a strong increase in the number of lawsuits brought against universities by students accused of sexual assault in recent years, from one lawsuit in 2012 to 53 lawsuits in 2015 ([www.saveservices.org](http://www.saveservices.org)).
- In addition to Title IX, students are bringing causes of action for breach of contract, defamation, and negligence. The predominant argument continues to be that the process was faulty.

## How We Can Help

Since 2011, the OCR has been actively investigating campus culture to determine whether a hostile environment exists, and if so, what steps the school is taking to eliminate that climate. Although we likely can't eliminate the assaults entirely, we can help to ensure that the response to complaints is prompt and equitable and the grievance procedure is clear and purposeful, such that over time, the climate can shift to reduce the risk of gender-based discrimination. To achieve this end, we offer the following services:

- Investigators. We can serve as external investigators, operating individually or in conjunction with the institution's internal team.
- Adjudicators. We can serve as single adjudicators or in conjunction with an institution's hearing panel. The benefit to having a non-voting, external hearing chair is to ensure adherence to the policy and the law.
- Training. The OCR and the White House Task Force recommend that the Title IX Coordinator, investigators and hearing panelists receive training for their role, including trauma informed training. It is also important for the team to understand other applicable laws including the Violence Against Women Act, the Clery Act and the Campus Sexual Violence Elimination Act, and how these laws co-exist both independently and collectively. Additionally, responsible employees and confidential persons must be trained on their reporting requirements.
- Policy writing. We can offer advice on drafting policies compliant with the requirements of Title IX.