



The U.S. Department of Education (the "DOE") recently [concluded](#) that the Newark, New Jersey public school district violated Title IX of the Education Amendments of 1972 ("Title IX") by failing to implement proper policies and respond to reports of student-to-student and employee-to-student sexual harassment.



On August 28, 2023, the DOE and the school district entered into a [Resolution Agreement](#) in which the district committed to take certain steps to resolve the compliance issues identified by the DOE.

In a [Letter](#) accompanying the Resolution, the DOE described nine violations of Title IX and its implementing regulations. While the Letter is not a formal statement of DOE policy, it provides some insights into the DOE's analysis and review methodology that may help schools and other entities subject to Title IX better comply with the law and prepare for a potential DOE investigation.

Title IX

[Title IX](#) is a federal law that prohibits sex-based discrimination in education programs and activities that receive federal financial assistance. Title IX's implementing [regulations](#) set forth in detail the policies and procedures schools must follow to comply with the law, including how schools must respond to complaints of sexual harassment.

The DOE is tasked with enforcing Title IX, which it does through its Office of Civil Rights ("OCR"). As part of its enforcement duties, [OCR](#) reviews and resolves complaints alleging sex discrimination in education programs or activities and conducts "proactive investigations"—including "compliance reviews"—"to examine potential systemic violations" of Title IX. OCR also publishes [guidance](#) on how to comply with Title IX.

The Compliance Review

Between approximately 2020 and 2023, OCR conducted an extensive compliance review of the Newark school district, which encompasses over 60 individual public schools, examining the district's "response to complaints and reports of sexual harassment, including sexual assault." OCR analyzed the school district's response to 80 student-to-student and 11 employee-to-student sexual harassment complaints the district had received between 2016 and 2022. Title IX regulations were [amended in 2020](#), so OCR evaluated these complaints under the regulations in effect at the time. OCR also reviewed the district's current written policies and procedures to determine if they had been updated to comply with the amended regulations. During the 2021-2022 school year, OCR interviewed the school district's Title IX Coordinator and 26 other current and former district employees. OCR also conducted a more in-depth review of 11 schools, focusing in particular on schools with higher incidences of student-to-student sexual harassment.

The Letter

Following its review, on August 28, 2023, OCR sent the Superintendent of the Newark school district a detailed Letter describing its findings. While OCR noted that the Letter only addresses the DOE's determination in this particular case based on the specific findings of its review, and should not be cited as a formal statement of DOE policy, the Letter provides a useful example of how Title IX applies in practice with respect to important issues that face every school subject to Title IX.

The Letter described nine specific deficiencies in the school district's Title IX procedures and policies, and it described 18 "salient examples" of how the district failed to properly handle specific incidents of student-to-student or employee-to-student sexual harassment or failed to keep proper records. In particular, OCR found that the Newark school district violated Title IX by failing to take the following required steps:

1. Coordinate its response to sexual harassment (and its other Title IX obligations) through a "designated Title IX Coordinator";
2. Consistently "notify employees, students, and their parents, of its designated Title IX Coordinator and that the District does not discriminate on the basis of sex";

3. Implement grievance procedures that comply with Title IX regulations;
4. Investigate and respond appropriately to incidents of employee-to-student sexual harassment, including because it "deferr[ed] its Title IX obligations to a state agency that did not fulfill them";
5. Investigate incidents of alleged student-to-student harassment reported to responsible employees;
6. Provide adequate notice to targeted or respondent students (and their parents) regarding allegations of sexual harassment or investigation outcomes;
7. Provide interim measures to the parties involved in incidents of sexual harassment;
8. Take "appropriate action in response to substantiated complaints of sexual harassment"; and
9. "[T]rain employees regarding the District's obligation to respond to sexual harassment, including sexual assault."

The Letter also expressed "concern" that the school district "may not have maintained adequate records of its responses to and investigations of complaints alleging violations of Title IX." The Letter stressed that under Title VI [regulations](#) (which also [apply](#) to Title IX), schools must maintain records sufficient to enable the DOE to ascertain whether the school has complied and is complying with Title IX regulations. But OCR's investigation found multiple instances where the district's case files were incomplete or kept in a manner that did not allow OCR to assess the district's response. For example, some case files were missing records of required aspects of the schools' response to sexual harassment complaints, such as proof that all parties were notified, witness statements, and documentation of interim measures, remedies provided, and sanctions imposed. The Letter also criticized the district's use of a data system that did not "consistently store" certain information required by Title IX.

The Resolution Agreement

Also on August 28, 2023—the same date OCR sent the Letter—OCR and the Newark school district entered into a voluntary Resolution Agreement to resolve the alleged violations and compliance concerns identified by OCR. Without admitting any violations, the school district resolved to undertake numerous measures to comply with Title IX, including but not limited to the following:

1. Revise the district's policies and procedures relating to sexual harassment and the resolution of complaints;
2. Update the district's website and each individual school's website to include the revised sexual harassment policies, as well as contact information for the designated Title IX Coordinator(s);
3. Notify employees, students, and parents that the district does not discriminate on the basis of sex;
4. Implement Title IX training for school district employees and students;
5. Clarify that the district will continue to fulfill its Title IX obligations even when another state agency also has jurisdiction over a covered sexual harassment complaint;
6. Conduct an annual "climate assessment" survey of students and employees "to evaluate the climate at each District school with respect to sex-based harassment and the extent to which the survey respondents are subjected to or witness sex-based harassment";
7. Re-review certain case files identified by OCR "to determine if further action is needed to provide an equitable resolution of the incident"; and
8. Implement a revised Title IX record-keeping system.

The Resolution also provided that OCR will "monitor" the district's compliance with the Resolution until the later of July 31, 2025, or such time that "OCR determines that the District is in compliance with the terms of [the Resolution] and the [relevant] Title IX statutory and regulatory obligations." If the district breaches the Resolution, OCR may "initiate administrative enforcement or proceedings or refer [the] case to the Department of Justice (DOJ) for judicial proceedings."

Takeaways

OCR's Letter and Resolution with the Newark school district serve as a reminder to entities subject to Title IX that OCR has authority to conduct comprehensive compliance reviews and impose significant requirements to ensure compliance with Title IX. The compliance issues described in the Letter and Resolution identify certain areas of concern for OCR, and they may provide helpful guidance on where school districts should focus their attention. In particular, school districts should ensure that their policies are fully up to date, information about Title IX is widely distributed to employees and students, and recordkeeping is adequate.

Authors



[Margo R. Casselman](#)

Counsel

MCasselman@perkinscoie.com [602.351.8159](tel:602.351.8159)

Explore more in

[White Collar & Investigations](#)

Blog series

White Collar Briefly

Drawing from breaking news, ever changing government priorities, and significant judicial decisions, this blog from Perkins Coie's White Collar and Investigations group highlights key considerations and offers practical insights aimed to guide corporate stakeholders and counselors through an evolving regulatory environment.

[Subscribe ?](#)

[View the blog](#)