



# M *School* Management *News*

Ohio School Boards Association

July 2024

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## 9 for IX: 9 things you need to know about the new Title IX regulations

by John R. Price, staff attorney

*Editor's note: On June 17, 2024, a federal district court issued an injunction blocking implementation of the new Title IX rule discussed in this article in Ohio and several other states. This article analyzes the rule as issued by the U.S. Department of Education, which, as of the time of publication, has been enjoined. The ruling is likely to be appealed, and OSBA will update members on the litigation and its impact on Ohio school districts as they become available.*

On April 19, the U.S. Department of Education (DOE) released new Title IX regulations, making significant changes in how districts must implement the law. While litigation over aspects of the new regulations has already commenced, school districts should be ready to implement the new regulations for the 2024-25 school year, as the regulations are effective Aug. 1, 2024.

The updates concern both the scope of conduct that falls within the ambit of Title IX and the processes districts must follow when sex discrimination occurs. Here we will explore nine of the most important features of the new regulations for K-12 school districts as they prepare to implement the new regulations in the coming school year.

### 1. 'Sex-based harassment'

An important change is the redefining of "sexual harassment" to "sex-based harassment" (34 Code of Federal Regulations (CFR) 106.2) (Note: Citations in this article reflect the updated citations listed in the new

regulations). As before, sex-based harassment is a specific subset of sex discrimination that triggers certain obligations on the part of school districts. According to the regulations' preamble, the purpose of this change appears to be to clarify to institutions that any harassment that is "based on sex" constitutes sex discrimination in violation of Title IX. The new terminology spells out that there is no requirement that harassing behavior be motivated by sexual or romantic intent or interest for Title IX to be implicated.

### 2. Sexual orientation and gender identity

The 2024 regulations also codify the principle that harassment on the basis of sexual orientation and gender identity constitutes sex discrimination under Title IX (34 CFR 106.10). While this has been the expressed view of DOE and some federal courts, these regulations give this interpretation of Title IX the force of law. This has several implications for school districts, as it may require the district to respond when students or employees are slurred, misgendered or otherwise targeted based on these characteristics. Many districts are already addressing this conduct through their disciplinary and/or anti-bullying processes, as much of this kind of behavior may violate the district's code of conduct. Districts now, however, will likely need to ensure that they follow their Title IX protocols when this behavior meets the new regulatory definitions.

Similarly, the regulations also indicate that while institutions are generally permitted to have sex-segregated restrooms and locker



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rooms, forbidding individuals from accessing the restroom or locker room that aligns with their gender identity causes “more than a de minimis harm” (34 CFR 106.31(a)(2)). Notably, these regulations do not implicate the participation of transgender athletes in sex-segregated athletic teams.

### 3. Hostile environment harassment

Under the proposed 34 CFR 106.10, “hostile environment harassment” is listed as a codified form of sex-based harassment, with an updated definition. It is defined as “Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.” The most notable practical change in this new definition is the term “severe *or* pervasive” which replaces the term “severe *and* pervasive” in the prior regulations.

This change may significantly expand the scope of conduct that may trigger a district’s Title IX obligations. For instance, a single instance of sex-based harassing activity may constitute sex-based harassment under the new regulation if it is considered “severe.”

Previously, a complainant would need to demonstrate that conduct was also “pervasive,” which typically meant that the behavior involved more than one instance of offending conduct.

### 4. Knowledge

Under the new regulations, almost all school employees will have an important role to play in implementing Title IX. The rules require that all school employees, except a narrow subset of individuals who are “confidential employees,” “notify the Title IX coordinator when the employee has information about conduct that reasonably may constitute sex discrimination” (34 CFR 106.44(c)(1)). In other words, knowledge of conduct that reasonably may violate Title IX by *any* employee is attributable to the district as a whole.

Practically speaking, this means districts will need to implement robust training for all employees so that they are aware of the conduct that needs to be reported to the Title IX coordinator. Failure by any such employee to report such conduct so may cause the district to be deemed to be deliberately indifferent to sex discrimination and liable in a lawsuit or complaint. The category of employees exempt from this

## School district contract settlements

### Certified contracts

**District:** Centerville City

**Settlement date:** May 2024

**Contract term:** two years, effective July 1, 2024

**Particulars:** 0% pay increase in each year of the contract; one-time 1% stipend for teachers up to a maximum of \$1,000.

**District:** Cleveland Municipal

**Settlement date:** May 2024

**Contract term:** two years, effective July 1, 2024

**Particulars:** 4% pay increase in year one of the contract and a 2% pay

increase in year two; commitment to use district-wide online gradebook; paid parental leave.

**District:** Orange City

**Settlement date:** May 2024

**Contract term:** three years, effective July 1, 2024

**Particulars:** 2% pay increase in each year of the contract

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requirement includes “confidential employees,” which are employees who are required by law to keep certain information confidential, such as social workers or counselors, as well as any other employees the district may designate as confidential employees.

## 5. Oral complaints

Another key change in the 2024 regulations is that oral complaints are now sufficient to implicate Title IX and obligate the district to initiate Title IX proceedings. The updated definition of “complaint” in 34 CFR 106.2 includes any oral or written request to the district “that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX and this part.”

## 6. Single-investigator model

In a move that will give districts more flexibility in processing Title IX complaints, DOE has amended the rule to allow districts to implement what is described as the “single-investigator model.” This means the individuals who serve as Title IX decision-makers may be the Title IX coordinator or the investigator. Districts still must ensure that individuals serving in these roles do not “have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent” (34 CFR 106.45(b)(2)). While this provides flexibility, districts may wish to consult with legal counsel to determine if implementing this model is advisable in any individual case.

## 7. Informal resolution

The 2024 regulations also expanded the opportunities for districts to use informal resolution. Districts are now specifically authorized to use informal resolution before a formal complaint is filed when the district receives information about conduct that may reasonably constitute sex discrimination (34 CFR 106.44(k)). Schools are generally given discretion as to whether to offer informal resolution on a case-by-case basis; however, they must

obtain the voluntary consent of the complainant and respondent. Informal resolution is not permitted in scenarios in which there is an allegation that a school employee has engaged in sex-based harassment of a student.

## 8. Students with disabilities

Students with disabilities covered by the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973 have several rights in the school setting that can affect the implementation of Title IX. This is true whether the student is a complainant or respondent. In recognition of this, under the updated regulations, Title IX coordinators now must consult with one or more members of the student’s individualized education program (IEP) or 504 team before taking certain actions as part of the Title IX process. The purpose of this consultation is to determine how the school district will comply with Title IX and the applicable special education law.

## 9. Jurisdiction and application

Lastly, the new regulations have expanded the universe of conduct that can trigger the district’s Title IX obligations. As under the 2020 regulations, the district must address discriminatory conduct that occurs within its educational programs and activities and within the United States. The 2024 regulations, however, clarify that the district “has an obligation to address a sex based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient’s education program or activity or outside the United States.”

This does not necessarily expand the ambit of Title IX to events that occur completely outside the educational program or outside the United States. However, it does make clear that districts may need to consider such conduct if a complainant alleges that the events somehow contributed to sex-based harassment that allegedly occurred in the program or activity.

## A final word

The new Title IX regulations are expansive, and there are important changes well beyond the nine listed here. DOE has resources on its website at <http://links.ohioschoolboards.org/88807> that will help district personnel understand the scope and effect of these changes, including the revisions themselves, a fact sheet and a summary of the major provisions of the rules. Districts should work with legal counsel and policy providers to ensure they are prepared to comply with the new regulations when they go into effect.



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# Keys to assessing a long-term partnership with a teacher candidate

by Kim Miller-Smith, senior student achievement consultant

Forty years ago, an administrator told me he hired teachers based on the twinkle in their eyes. I was stunned and still think about that statement all these years later. The hiring season is not a time for assessing twinkling eyes. It's an opportunity to change the face of a department or grade level, add unique skills to a staff and provide excellence to students. It is not a time for favors — not for a longtime booster, neighbor, relative or board member. You are potentially entering into a 35-year professional relationship, and the selection process should reflect the importance of that commitment.

Districts commonly use teacher screeners to assess candidate beliefs and understanding of pertinent concepts

that may impact teaching and student learning. Such screeners are purchased and used with gusto and, perhaps, blind loyalty. This is not to say screeners are not valuable or districts shouldn't use them. It is important, however, to know the screener is one piece of information in the process — others may include licensure, transcripts, professional assessment scores, candidate résumés and interviews. When using a screener, consider whether the particular screener being used addresses district needs. Do the questions reflect district and community values and the district's mission? Have you collected information about the reliability of the measure as played out in your district? Did the five-star scorer pan out as a five-star performer in the classroom? If the evidence shows the screener is valid

and reliable in your situation, terrific. If not, it's time to look at another screener or find a way to use the current instrument to match district needs better.

Many screeners boast their instrument's ability to predict teachers who will succeed, remain in the district and contribute significantly to the education and well-being of students as well as identify those who will fail and quit. Unfortunately, it's just not that simple. Succeed in what environment? Stay or leave the district or profession for what reason? Post-pandemic, I strongly recommend looking at what you are screening. It's fair to say the dynamics and culture have changed.

Teacher screener developers focus entirely on the skills, attitudes and beliefs of a teacher. What's not simple when entering into this 35-year

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relationship is assessing how those skills, attitudes and beliefs will fit into a particular *system*. How will the teacher be developed? What instructional leadership is provided at the building and district level? What are the community's aspirations for its children? How strong is collegial support? How developed are the teacher's skills, attitudes and beliefs? Not unlike most professionals, teachers will morph into a new version of themselves for years as they are impacted by the system, family life or personal challenges, to name a few factors. Teachers are one very important part of the system and to make that part successful district administrators must study the other portions of the system that impact teacher success or failure.

Next, administrators, in conjunction with others in the building or district office, must consider what they are looking for in this particular position. Just like boards of education and communities determine the necessary qualifications and skill set when hiring a superintendent, so should the administrators and educators involved in the new teacher hire discuss the attributes needed for the position. And, like the superintendent, the desired skills and qualities differ from time to time and from building to building.

Is the building looking for a strong team player, someone to shake up a grade level, a content specialist, innovator or culture builder? It is essential to know what kind of teacher is needed for each situation with a vacancy. One size does not fit all.

Once the list of desired traits and skills is developed, the next important area to explore is what the candidate knows and, importantly, how to confirm they possess the knowledge advertised. Typical interview questions don't delve far enough into the performance aspect of teacher selection.

Some performance question suggestions include:

- Share an example of how you differentiated this standard for students who are accelerated, on level and below level. Give an example for

each level.

- Give an example of a situation when you personalized learning for this topic and how you personalized it.
- Tell us how you incorporated the science of reading (SOR) into your class.

It is crucial to have a content or instructional expert on the hiring team or, at a minimum, someone on the hiring team who could answer the questions themselves and understand the answers being given — while being able to confirm that the particular aspects of the candidate's answer meet the district's criteria for instructional methodologies, such as differentiation, personalization, SOR and others. These aren't intended to be "gotcha" questions, but they do keep candidates honest. It's easy to say, "I'm very familiar with differentiation," but an entirely different thing to provide an example. A candidate who struggles to perform in one area doesn't have to be eliminated from contention if other important qualities the district is seeking are evident. If the district is individualizing professional development or if there are development topics shared with teachers new to the district, the performance question topic that caused the candidate to stumble should be added to a personal or group development plan.

It's also illuminating to find out how a candidate answers questions such as:

- Who are you? This is different than tell me about yourself. Notice how the candidate primarily identifies themselves and in what context. Obviously and for legal purposes, there is no right or wrong answer, but the answer to the question could provide insights.
- How did you find your way here? The answer to this question may paint the candidate's professional or personal journey and explain why they chose this district at this time. Again, there are no right or wrong answers but it's a chance to hear why candidates may be interested in your district.
- What are your aspirations for yourself and your students? This

answer provides a deeper dive into the candidate's vision and some estimate of their efficacy measures for themselves and their students.

- What do you want out of the teaching profession and this district? Just as the district needs to define what it wants and needs from an incoming teacher, the candidate should be able to define their wants and needs. This question is harder for a brand-new teacher, but those who have a couple of years behind them should have an idea of what they need from the district and their colleagues to be successful. For example, if the candidate is looking for military school discipline and the district is firmly set on positive behavior intervention supports (PBIS) or restorative justice discipline, it may be difficult to provide for this teacher's need. This is certainly not a reason to pass on the candidate, but it is worthy of a brief discussion during the interview. It's also important to have a teacher candidate fully explain broad concepts. The statement, "I want to be supported in my teaching," can mean many different things. It can mean a desire for strong discipline, the most up-to-date technology and resources, the freedom to be wildly innovative or help with parents who create issues for the teacher.
- Finally, what's your "why?" During the interview season, it's an opportune time to reconsider and reflect on your why. Undoubtedly, the why has changed a bit if you've been in the profession for a while, but the underlying reason is still probably evident. It's equally important to find out the why of every candidate the district interviews. The answers are typically altruistic because that's the backbone of our business. However, every journey to why is different, and knowing and understanding the why helps those responsible for welcoming and acclimating new hires be more responsive. Here's wishing you many successful and long committed relationships.

# Time for a summer reset!

by Quinn Maceyko, board and management services consultant

Summertime: When you observe crops growing, flowers blooming and the smells of fresh mulch and asphalt. It's a time to take a vacation and spend countless hours with family while children are out of school. Those summer getaways are a great way to reset your mind and body before rolling into the back half of the calendar year.

Unlike the normal calendar, the school calendar designates June and July as the end of the year. June and July can be busy months personally and professionally. For school board members, these months include graduations, the closeout of the current and opening of the new fiscal year and so much more. There are two topics to consider while the classrooms are empty and you have much less on your plate: district goals and superintendent and treasurer evaluations.

## Current district goals and strategic plan

Around this time last year, you, your school board colleagues, your school district's administrative team and others may have had conversations about goals for the 2023-24 school year. These discussions were likely wide-ranging, and each facet of your district's operations was evaluated. It is time to once again not only revisit the progress on last year's goals but create new ones for the upcoming year.

First, review these questions:

- How much progress has been made on your school district's 2023-24 goals?
- What evidence can the administrative team share with the school board to show this?
- Will there be information accessible on the website for the community to see?

Answers to these questions provide the foundation for your reset.

Depending on the progress made on your school district's goals, your conversation can move in two different directions. First, a current goal or two may need to be carried over into the new school year to allow more time to be devoted to that area and garner more improvement. Not all goals that are set can be accomplished in one year, and the administration may need to continue working on them through the coming year. Second, many goals have now been completed, and it is time to create new ones. This will initiate a collaborative process between the board of education and administration to determine the priorities for the 2024-25 school year and the strategies to tackle them.

Consider using a work session to review the goal-setting process so that it can be thorough and the only topic of discussion.

Additionally, if you have a strategic plan, summer is a great time to check in on its progress. Internal questions you may ask are similar to those used in the conversation on district goals listed above. Analyze your strategic plan by its length of use; the relevancy of the goals, statements and strategies within it; evidence and progress updates provided by the administration; and whether a new strategic plan is needed based on the successes of the current one.

To assist in evaluating the progress made toward accomplishing your plan, consider sending out a survey as summer closes and everyone moves back into school mode. The survey provides your community, teachers and staff an opportunity to share their respective thoughts on the plan's progress, which can help you, as a board of education, determine the next phase for your school district.

## Superintendent and treasurer evaluations

The second part of your summer reset revolves around the two district employees the board of education

oversees: the superintendent and treasurer. As the 2023-24 school year finished, I hope your school board met with them to wrap up their evaluations. A work session or time carved out during a regular meeting to evaluate your superintendent and treasurer should be intentional and the proceedings conducted professionally.

While the connection between setting new district goals for the upcoming academic year and superintendent and treasurer evaluations might be trivial, think of the evaluation piece as an extension of goal setting. Evaluation often has the reputation of being a rigid, cut-and-dry word, but, in the end, it should be less about strengths and weaknesses.

Instead, it should be a conversation about goals that each side — the board of education and the administrator — want to see accomplished in the next school year. Use the previous year's evaluation to frame the discussion in addition to the new district goals.

Checking these two items off your "to-do" list allows for a full summer reset. Once these are finished, establish a timeline for updates to the board of education. Whether it be bimonthly, quarterly or in trimesters, provide ample time during school board meetings for the administrators to present the progress being made and the evidence to support it. Check in on the superintendent's and treasurer's respective goals after the first semester. This process will set you up for a successful school year and a strong district leadership team to meet the goals set over the summer.

OSBA offers free standards-based models for evaluating your superintendent or treasurer. Access these resources at [www.ohioschoolboards.org/evaluation-services](http://www.ohioschoolboards.org/evaluation-services). Learn more about strategic planning and goal-setting services at [www.ohioschoolboards.org/strategic-planning-and-goal-setting](http://www.ohioschoolboards.org/strategic-planning-and-goal-setting).

# Steps to ensure safe chemical storage in school buildings

by Sedgwick

Numerous employee safety hazards exist in schools, including slips, trips and falls; overexertion; and sprains and strains, but chemical handling and usage is an often-overlooked hazard that can pose significant risks to the health and safety of students, teachers and staff if not properly managed.

Chemicals may come in several forms, including liquids, solids or gases. Each may pose any number of hazards, including toxicity, flammability, corrosivity and even explosion risk. Faculty and staff may be at risk when using or handling chemicals, so proper training and precautions are essential.

The first step in determining potential hazards is to perform a chemical inventory in each department. While you may think the inventory is easy, don't underestimate the number of places where chemicals are used. Meeting with department heads, teachers or anyone who may oversee chemical usage in their area is beneficial for creating an accurate list.

Think outside the box when performing an inventory. Some of the departments with potential chemical hazards include:

- laboratories: acids, bases, flammables, toxins or corrosives;
- industrial and shop classes: inks or degreasers;
- art: paints or photography chemicals;
- landscaping: fuels, fertilizers, herbicides, pesticides and deicing products;
- maintenance/janitorial: drain cleaners, cleaning supplies, solvents, paints, fuels or mercury-containing items;
- repair shops: fuels and oils.

Once you have identified where chemicals are being used, you will want to evaluate if the chemicals are being handled and stored safely. Below is a guide to help you with the evaluation. Although not a complete list, it can be a solid place to start:

- Designated storage areas:

- ♦ Designate specific areas for chemical storage.
- ♦ Ensure they are well-ventilated.
- ♦ Use cabinets or closets with secure locks to prevent unauthorized access.
- Chemical compatibility:
  - ♦ When storing chemicals, ensure their compatibility.
  - ♦ Keep separate chemicals that may react with each other to avoid reactions.
  - ♦ Use chemical charts to identify compatible substances.
- Labeling:
  - ♦ All chemical containers should be clearly labeled with the chemical's identity, hazard warnings and special handling requirements.
  - ♦ If labels are defaced or unclear, replace them with a legible label.
- Ventilation:
  - ♦ Periodically check ventilation to ensure good airflow.
  - ♦ Ensure all containers are covered when not in use.
- Shelving and storage of containers:
  - ♦ Confirm shelving and cabinets are compatible with the material being stored.
  - ♦ Avoid storing chemicals on the floor or in areas with high traffic.
- Quantity limits:
  - ♦ Limit quantities of chemicals to what is necessary for expected purposes.
  - ♦ Avoid excessive stockpiling.
  - ♦ Perform routine cleanout of old and unused chemicals and dispose of them properly.
- Emergency equipment/emergency procedures:
  - ♦ Keep emergency equipment, such as spill kits, accessible and refilled when necessary.
  - ♦ Keep eyewash and safety shower stations and fire extinguishers accessible and in proper working order.
  - ♦ Review emergency procedures with staff, and make changes when necessary.

- ♦ Ensure all staff and students understand the procedures for chemical spills and accidents, including evacuation plans.

Finally, develop a program to inspect chemicals. Note any areas that pose a hazard, and ensure they are resolved promptly. Check for proper storage amounts, incompatible storage issues, damaged shelving or cabinets, uncovered chemicals or anything missing. Routinely train staff and students on the specific hazards of the chemicals and the precautions to take.

Chemical storage in schools is critical to ensuring the safety of students and staff. Proper storage helps prevent accidents, spills and exposure to these chemicals. Be sure to develop an effective program for your school — identifying these hazards is critical to a safe workplace.

If you need help identifying potential hazards in your workplace, please contact **Andy Sawan**, risk services specialist at Sedgwick, at [andrew.sawan@sedgwick.com](mailto:awandrew@sedgwick.com) or (330) 819-4728.

## SUNSHINE LAWS FOR SCHOOLS

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