

Title IX Toolkit for Advocates: Q&A

My school just published a new sexual harassment policy in response to the new Title IX regulations. Now what?

In order to comply with the new Title IX regulations, colleges and universities will likely be publishing updated grievance procedures by August 14, 2020, the deadline provided by the Department of Education (DoE). You can review your school's policy to learn how these new regulations will be implemented on your campus. There are still many ways you can help make the process better for student-survivors at your school!

Unfortunately, there are many forms of sexual harassment that the new Title IX regulations do not require colleges and universities to respond to; however, schools may still CHOOSE to respond to those types of sexual harassment. Students can advocate for their schools to have sexual harassment policies or codes of conduct that address all forms of sexual harassment, not just those limited by the new Title IX regulations. DoE creates the minimum schools have to do, but they can always do more.

Some of the ways students can advocate for broader policies include writing school administrators, speaking to the school newspaper, starting a petition, joining student organizations, or partnering with allied student organizations to advocate for change.

YOUR
voice matters!



What should I be aware of when I review the new sexual harassment policy?

What is the definition of sexual harassment?

Is your school's definition of sexual harassment too narrow? Although Title IX does not require schools to respond to the following types of conduct, students can demand that their schools' sexual harassment definitions include these types of conduct to fully protect and support students. Does your school's sexual harassment definition include:

- (1) When conduct occurs outside of an "educational program or activity," such as a private residence of a student?
- (2) When the sexual harassment happens in a school-sponsored study abroad program?
- (3) When a student is sexually harassed by a non-student, or a student sexually harasses a non-student?
- (4) When sexual harassment has happened but doesn't yet meet the "severe, pervasive, and objectionably offensive" standard from DoE?



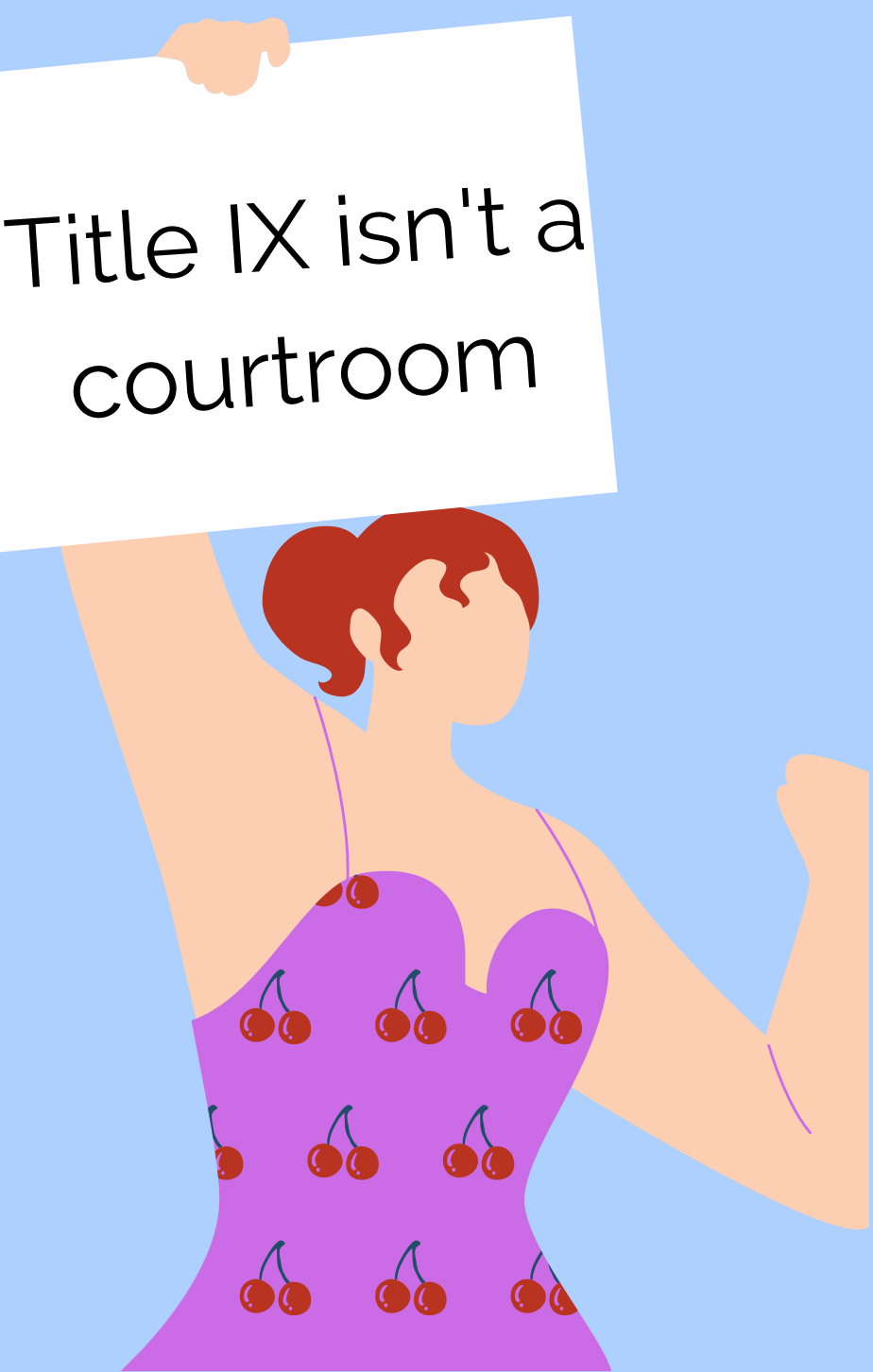
What is the definition of consent?

Under the new regulations, schools can choose how they define consent. Review your school's definition of consent.

- (1) Is it thorough?
- (2) Does it give a clear definition of consent?
- (3) Does it give guidance on consent under various circumstances, such as if one or both parties are under the influence of alcohol?
- (4) Does it explain withdrawing consent, or how consent is expected to be communicated?

If your school's definition of consent is unclear or too narrow, you can advocate with your school to create a better definition of consent.

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What “standard of evidence” is used in Title IX cases?

In order to determine if there is enough evidence to prove the charges against a respondent, schools use rules known as evidentiary standards.

Historically, the “more likely than not” (also called “preponderance of the evidence”) standard, was used in these types of cases. Now schools can choose between that and the “clear and convincing evidence” standard meaning substantially more likely than not. The “clear and convincing evidence” standard will make it harder for student-survivors to show that they were sexually harassed. Regardless of which standard is used, a school must apply the same standard to all formal complaints of sexual harassment made by a student, employee, or faculty member.

What are the rules for cross-examination?

Cross-examination occurs during a hearing when one party's advisor asks witnesses or the other party questions. DoE requires that if a party doesn't have an advisor, the school will assign one to them during the cross-examination part of the hearing. Do you know who your school will assign as advisors in these situations?

DoE also allows (but doesn't require) schools to place appropriate limits on cross-examination. However, the DOE specifically prohibits questions about the survivors' sexual history in most instances. Does your school have rules outlining what is and isn't appropriate cross-examination? Does your school require that cross-examination be respectful and non-abusive?

Notably, under a 2021 federal court decision, a school's Title IX decision-maker is authorized to consider statement from a party or a witness, even if they are not subject to cross-examination. This means that you may still have your statement heard even if you do not submit to cross-examination.



How can NVRDC help?

NVRDC provides free lawyers who act as attorney-advisors to survivors in Title IX cases at DC colleges and universities. If you are the complainant in a Title IX case and you would like to speak to an NVRDC lawyer who could potentially serve as your advisor, please contact 202-742-1727 or email info@nvrdc.org.



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