

TITLE IX: THINGS THAT ARE CHANGING

Title IX Geography: Will my school investigate sexual misconduct that happened off campus?



BEFORE

Schools were required to investigate allegations of sexual harassment (including sexual violence) perpetrated by a student, regardless of where it occurred, and even if it was off-campus.



NOW

Presently, schools are required to investigate reports of sexual harassment in education programs and activities in the United States, including in: (1) buildings or locations that are part of the school's operations, including remote learning platforms; (2) off-campus settings if the school "exercised substantial control" over the respondents and the content in which the alleged sexual harassment occurred; and (3) off-campus buildings owned or controlled by a student organization officially recognized by a postsecondary school. Students should advocate for their schools to include conduct occurring at off-campus locations under their sexual harassment policies.

"Substantial control" is a multi-factor inquiry including whether the school funded, promoted, or sponsored the event or circumstance where the alleged harassment occurred.

Notably, the 2020 Amendments apply to on-line platforms used by the school and to alleged sexual harassment perpetrated by a student using a personal electronic device.

Title IX Timeline: How long will it take for my Title IX case to be resolved?



BEFORE

Prior to 2020, schools were encouraged by the Department of Education, but not required, to finish investigations within 60 days.



NOW

Now there is no specific timeline recommended for schools. Schools are required to include "reasonably prompt" timeframes in their grievance procedures, and can temporarily delay a procedure for "good cause" (like a witness being busy). Notably, a school must resolve each formal complaint of sexual harassment according to the time frames the school has committed to in its grievance process.

Schools are still permitted to adopt the 60-day time frame.

TITLE IX: THINGS THAT ARE CHANGING



BEFORE

Prior to 2020, schools were allowed to decide their own processes under Title IX as long as they were prompt and impartial. This required that schools create a process for determining the responsibility of a respondent and deciding who made that determination. Some schools chose to have investigators make that decision, some schools used hearing panels, and some used a mix of the two.

Title IX Process: How will my school's Title IX processes change?



NOW

Now, higher ed. schools **MUST** have (1) an investigation and then (2) a live hearing. This means that a decision-maker will hear from both parties and any witnesses, will review the evidence, and make a decision. This format is similar to a courthouse trial. **HOWEVER**, students can choose an informal resolution instead of a hearing. Notably, a school is not permitted to offer an informal resolution process to resolve allegations that an employee sexually harassed a student. The informal resolution process may take many forms, including mediation or restorative justice. Both parties must provide written consent before a school proceeds with an informal resolution process.



BEFORE

Prior guidance discouraged schools from allowing cross-examination. A big reason for this was the likelihood that cross-examination would cause further trauma to the survivor. Instead of cross-examination, many schools allowed parties to submit questions that the hearing panel would then ask the parties.

Title IX Process: Will I have to go through cross-examination during the hearing?



NOW

Should a survivor or witness submit to cross-examination, schools are required to allow the advisor for each party to cross-examine the opposing party or witness. This means the survivor could undergo cross-examination by the respondent's advisors; however, the respondent themselves cannot be allowed to directly question the survivor. Should the survivor opt to not be cross-examined, based on the outcome of a federal lawsuit, a school's Title IX officer may take the victim or a witness's statements under consideration without that individual being subject to cross-examination.



BEFORE

Previously, mediation or informal resolutions were discouraged by the Department of Education, but schools could choose to allow such methods of resolving sexual harassment complaints. Informal resolutions do not necessarily require the parties to ever speak to, or be in the same room with, each other.

Title IX Process: If I file a complaint, will my school force me to negotiate with my assailant?



NOW

Schools can still choose to offer informal resolution processes, but both parties must agree in writing that they wish to engage in the informal process instead of the school's formal grievance process. Schools must allow either party, if they wish, to withdraw from the informal process and resume the formal grievance process.

TITLE IX: THINGS THAT AREN'T CHANGING

Anonymous Reports



Is my school allowed to investigate my assailant without using my name?



School Title IX Offices can still receive notice of sexual harassment, including through an anonymous report. This includes the ability for a student to report anonymously to receive supportive measures.

Title IX Supportive Measures



Do the Title IX changes affect whether I can get accommodations from my school, such as moving dorms or rescheduling an exam, if I am sexually assaulted?



What were previously called "interim measures" or "accommodations," are now called "supportive measures." Supportive measures are tools schools are required to provide students following sexual violence in order for the students to feel safe and supported. Supportive measures must not "unreasonably burden" the respondent. These measures can include changing classes, rescheduling exams, etc. Survivors can still access these services without filing a formal complaint to the school under Title IX.

Title IX Advisors



Who can be my advisor during the hearing?



The Title IX rule still provide students with the right to an advisor of their choice. The advisor can be another student, an attorney, a counselor, or any other person the student chooses. Even if a student chooses not to have an advisor for the investigation, they must use an advisor to conduct cross-examination of the respondent and witnesses during the live hearing. This means a school will assign an advisor for students who do not pick their own for the purpose of conducting cross-examination.

Inclusion of Sexual Assault, Stalking, and Intimate Partner Violence



Is sexual assault, stalking, and intimate partner violence considered "sexual harassment"?



The new rule includes sexual assault, stalking, and intimate partner violence (referred to as "domestic violence" and "dating violence") as types of sexual harassment that school must investigate when they receive a formal complaint.

TITLE IX: TERMS TO KNOW

Complainant: according to the new rule, a complainant is “an individual alleged to be the victim of conduct that could constitute sexual harassment” including sexual assault, dating violence, domestic violence, and stalking.

Respondent: according to the new rule, a respondent is “an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.”

Parties: the complainant and the respondent.

Cross-examination: the direct questioning of a party or a witness by a party or their advisor.

Title IX (“Title 9”): a federal law that protects people from discrimination based on sex in educational programs or activities that receive federal financial assistance.

Sexual harassment: an umbrella term that captures a variety of prohibited conduct of a sexual nature, all of which may constitute sex discrimination under Title IX. It includes sexual assault, domestic violence, dating violence, stalking, and other offenses. You should be able to find your school’s list and definitions in the student code of conduct, or in other Title IX documents.

Advisor: someone who supports and advises the complainant or respondent in accessing supportive measures and in navigating a university's grievance process. Both parties have the right to an advisor of their choosing, who may be an attorney. Advisors will conduct cross-examination in live hearings under the new regulations.