

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

Under the TIX regulations issued in May 2020, schools are not required to investigate sexual harassment (including sexual violence) that occurs outside of a school's "program or activity." This means that a school is not required to investigate sexual harassment that happens off campus unless the location has a strong connection to the school (e.g. athletic field, band practice, housing of a university-sanctioned organization). Schools are not required to investigate conduct that occurs in study abroad programs outside of the United States. **HOWEVER**, schools can **CHOOSE** to investigate allegations of sexual harassment, regardless of where they occurred. Students should advocate for their schools to include conduct occurring at off-campus locations under their sexual harassment policies.

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).

Anonymous Complaints: Is my school allowed to investigate my assailant without using my name?



BEFORE

Previously, if the school chose to allow it, they could proceed with investigations anonymously on a case-by-case basis.



NOW

Now, students cannot file an anonymous formal complaint with their Title IX Office to begin grievance procedures against an assailant. However, a student can report to the school to receive supportive measures without their name being shared with the assailant.

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.



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

Now, higher ed. schools are required to allow the advisor for each party' to cross-examine the opposing party and all witnesses. This means the survivor will undergo cross-examination by the respondent's advisor; however, the respondent themselves will not be allowed to directly question the survivor.



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

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 include 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.