



The Current Status of the Title IX Rule

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Presenters



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What is Title IX?

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- Title IX is a federal civil rights law that requires your school to help you when you report sexual harassment (and other sex discrimination)
- Under Title IX, your school must have an employee called the “Title IX coordinator”—their job is to help students who report sexual harassment (and other sex discrimination)
- If you’ve been sexually harassed, you have the right to:
 - **Supportive measures:** accommodations or services from your school to help you feel safe and learn.
 - **Investigation:** If you ask for an investigation, your school must start investigating right away, even if there is a separate police investigation. Then, it must tell you in writing about its decision, how it will keep you safe, and how you can appeal its decision if you disagree with it.

A Brief History of Title IX

Title IX Timeline

- **1972:** Title IX statute
- **1975:** Department of Education Title IX regulations
- **1998 & 1999:** Supreme Court created legal standards for litigation (when students sue their school in court for money damages)
- **1997-2017:** for 2 decades, the Department of Education created consistent legal standards for administrative enforcement (when students ask the Dept to make their school comply with Title IX)
 - Different from litigation standards bc school is not liable for money damages

Title IX guidances (1997-2017)

- **Title IX guidances in 1997 and 2001**
 - Required schools to address sexual harassment if:
 - A school employee knew or should have known about...
 - ...“unwelcome conduct of a sexual nature” that limited a student’s ability to participate in / benefit from school
 - Required school responses to be “prompt,” “equitable” & “reasonable”
 - End harassment, remedy its effects, and prevent recurrence
 - Conduct adequate, reliable, and impartial investigations
 - Consistent with Due Process and First Amendment rights
- **Obama Title IX guidances (2011, 2014)**
 - Reaffirmed 2001 standards
 - Provided additional clarifications, including:
 - Required preponderance of evidence
 - Required schools to address off-campus incidents
 - Discouraged adversarial cross-examination

The Trump Title IX Rule

Summary of Trump Title IX policies

- Rescinded 2001, 2011, and 2014 guidances
- Created many harmful requirements that don't apply to any other type of student or staff misconduct—only sexual harassment
 - Schools can (sometimes must) ignore or dismiss survivors' complaints
 - Schools can (sometimes must) mistreat survivors whose complaints are not dismissed
 - Schools can (sometimes must) use uniquely unfair and traumatizing procedures to investigate sexual harassment
- BUT survivors still have some rights
 - There is clarifying language from the Trump rule's 2,000+ page preamble
 - Speaker notes in these slides contain legal citations to [34 C.F.R. 106](#) and [85 Federal Register 30026](#)

1. Ignoring/dismissing Title IX complaints (1/3)

- School must dismiss if incident occurred outside of education program or outside U.S. **BUT**
 - Title IX still covers incidents that occur:
 - Online/digital using school platform (e.g., Zoom)
 - Off-campus during school activity
 - Off-campus in building owned/controlled by “officially recognized” student org (e.g., fraternity)
 - Off-campus but school had “substantial control”
 - Schools can decide for themselves whether they have “**substantial control**” over private incidents, such as:
 - Private off-campus apartment
 - Private hotel room, grows out of a school-sponsored activity
 - Teacher’s visit to student’s home
 - Online harassment using personal device during class

1. Ignoring/dismissing Title IX complaints (2/3)

- School must dismiss if incident doesn't fit a narrow definition (“severe and pervasive”, “effectively denied equal access”) **BUT**
 - “effectively denied” doesn't mean student has to drop out to get help
 - Just need to show sexual harassment has affected ability to learn -- e.g., missing class, trouble concentrating, quit 1 activity (but stayed in others), lower grades
- School may dismiss complaint if the respondent leaves the school at any time during an investigation
- School must dismiss if complainant doesn't go to the school anymore **BUT**
 - Only applies at the time complaint is filed
 - If a survivor files a complaint and then transfers/graduates/drops out, school isn't required to dismiss

1. Ignoring/dismissing Title IX complaints (3/3)

- In colleges/universities, school may ignore sexual harassment if it is not reported to an “appropriate official” **BUT**
 - Schools can decide for themselves which employees are considered “appropriate officials” -- they can designate as many as they want
- **NOTE: Even if your complaint is dismissed:**
 - If complaint is dismissed because it didn’t fit the definition/location requirements, schools can use a “non-Title IX” policy
 - If a complaint is dismissed because one of the parties has left the school, school must still provide supportive measures

2. Mistreating survivors (1/3)

- Schools can treat students “unreasonably”
- Supportive measures can’t be “punitive/burdensome” on respondent **BUT**:
 - **If you don’t feel safe at school, you can ask for:**
 - 1-way no-contact order
 - Transfer to different class, dorm, dining hall, campus workplace, and/or transportation route
 - **If your harasser is a student, your school can:**
 - Move your harasser to a different class, dorm, dining hall, etc.
 - Remove your harasser from a school activity if (1) removal is not a punishment for those who violate Title IX or (2) it is a punishment but your school determines your harasser did harass you
 - **If your harasser is a student-employee, your school can:**
 - Supervise your harasser at their campus workplace
 - Put them on paid administrative leave during your investigation
 - **If your harasser is a non-student employee, your school can:**
 - Put them on paid/unpaid administrative leave during investigation

2. Mistreating survivors (2/3)

- **If sexual harassment has made it harder for you to learn or go to school, your school can:**
 - Give you excused late arrivals, excused absences, or leaves of absence
 - Give you more time for assignments or exams, or an opportunity to resubmit an assignment or retake an exam
 - Let you withdraw from a class without putting a "W" on your transcript, or retake a class without charging you for tuition again
 - Give you a tutor or connect you to tutors outside of school.
 - Adjust your transcript (e.g., remove bad grade, recalculate final grade, change to Pass/Fail, regrade anything unfairly graded by your harasser)
 - Keep you in any school activities/honors/scholarships that have a GPA requirement, even if you no longer meet it
 - Reimburse you for tuition or give you tuition credit on any classes you didn't take or didn't finish
- **If the sexual harassment created a new disability** (e.g., anxiety, depression, PTSD) or exacerbated an existing disability, you also have a right to disability accommodations under Section 504.

2. Mistreating survivors (3/3)

- Title IX prohibits retaliation
- If you report sexual harassment, your school cannot punish you for:
 - Breaking a school rule during the harassment—unless your school has a “zero tolerance” policy for that rule (e.g., drug or alcohol violation)
 - Telling other people about the allegations in your formal complaint
 - Note: it can stop you from telling other people about the evidence in your investigation
 - Making a so-called “false” statement without having actual evidence that you lied.
 - For example, if your school did an investigation and decided that there wasn’t enough evidence that your harasser harassed you, that’s not actual evidence that you made a false statement

3. Unfair investigation procedures

- Schools may use an unfair standard of proof (clear and convincing evidence)
- Schools must presume during the entire investigation that there was no sexual harassment **BUT**
 - They can't assume you're lying or make assumptions about your credibility based on your status as a complainant
- Schools can create longer delays than before **BUT**
 - Can't delay longer than "temporary delay"
- In colleges and universities, all parties and witnesses must attend a live hearing and submit to cross-examination by the other party's advisor **BUT**
 - Trump rule only requires schools to "permit" advisors to conduct cross-examination -- they don't have to
 - Parties may agree to jointly waive their right to cross-examination

What's Next?

Advocates are fighting to undo the Trump rule

- **There have been 5 lawsuits challenging the Title IX rule**
 - 2 have been dismissed on technical grounds
 - 1 has been put on hold
 - 2 are still litigating (NLWC is one of these)
- **NLWC lawsuit**
 - Argument: the rule is illegal because it is “arbitrary and capricious” and is motivated by the toxic and false sex stereotype that women and girls lie about rape => violates federal law, including the Constitution
 - Trial was held in November 2020.

Biden has promised to undo the Trump rule

- **3/8/21:** Biden ordered Dept of Education to review all Title IX policies in 100 days and to “consider” rescinding the Trump Title IX rule
 - Those 100 days ended on 6/16
- **4/6/21:** Dept of Education [announced](#) plans to (1) hold a public hearing, (2) issue a Q&A doc about the Trump rule, and (3) propose a new Title IX rule
- **6/7-6/11:** Dept of Education held 5 days of [public hearings](#) to hear from members of the public about how to improve Title IX enforcement
 - Majority of commenters were strongly pro-survivor
- **6/10/21:** Dept of Education issued a new [regulatory agenda](#), which indicates they plan to propose a new Title IX rule in May 2022
 - Still no timeline on the Q&A doc about Trump rule

How You Can Get Involved

- NPRM Timeline
- Notice-and-comment
 - Dept of Education (ED) will issue a **notice** of proposed rulemaking and ask for **comments** from public
 - Anyone can submit a comment
 - ED must consider all comments before finalizing the rule
 - Comment guides/templates
 - Sign-on comments
- Sign up for email updates from [NWLC](#) and our partners ([Know Your IX](#), [End Rape on Campus](#), [It's On Us](#), [Every Voice Coalition](#)) to stay in touch about our lawsuit, the new Biden rule, and more

Questions?