



## NEW TITLE IX REGULATIONS DRAMATICALLY CHANGE PROTOCOL OF SEXUAL HARASSMENT COMPLAINTS

New regulations of the U.S. Department of Education (DOE), dramatically changing the standards and procedures applicable to Title IX sexual harassment complaints, become effective on August 14, 2020. Schools, colleges and universities that receive federal funding must implement changes to their Title IX sexual harassment policies and notices to address the requirements of the new regulations.

### Sexual Harassment Redefined

Most noticeably, the DOE has redefined “sexual harassment” under Title IX to include one of three categories of conduct:

- An employee conditioning the provision of education benefits on an individual’s participation in unwelcome sexual conduct (i.e., quid pro quo sexual harassment);
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the education programs or activities; and
- Sexual assault, domestic violence, dating violence or stalking, as defined in the Clery Act or the Violence Against Women Act.

### Responding To Complaints

Other changes of note are:

- Institutions are not required under Title IX to respond to complaints alleging conduct that did not occur within the United States or conduct occurring off school grounds and outside of a school program or activity if the conduct is not otherwise under the school’s “substantial authority.”
- Institutions are required to respond to reports of sexual harassment by providing supportive services to victims.
- Institutions have discretion to choose between two standards of proof – preponderance of the evidence or clear and convincing evidence. However, the same standard must be applied to both student and employee complaints.
- The “single investigator” model is prohibited. The ultimate decision-maker cannot be the same person as the investigator or the Title IX Coordinator.
- Title IX personnel are required to receive proper training on the new definition of sexual harassment and how to investigate claims, conduct hearings and remain impartial.

### Different Rules for Different Schools

The regulations do not apply the same requirements to K-12 schools as are applied to colleges and universities. For example:

- Colleges and universities are required to hold live hearings on all formal complaints, which includes the opportunity for the parties’ designated “advisors” to conduct cross-examination of the parties and other witnesses. In contrast, K-12 school systems are not required to hold such hearings (but may opt for such a procedure).
- A college or university will be deemed to have “knowledge” of a complaint, obligating it to act, only if its Title IX Coordinator or other official with authority to institute corrective measures has been notified of the complaint. In contrast, once notice has been given to any employee of a K-12 school system, the school is deemed to have knowledge of the complaint, even if the employee lacks the authority to institute corrective measures.

While preparing for reopening and addressing concerns raised by COVID-19, educational institutions must update their policies, notices and procedures in time for the August 14th deadline. How these new standards balance protecting students and employees of educational institutions from sexual harassment while providing due process and fairness to the individuals involved in the grievance process remains to be seen.



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