

What to Know About Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.”

–TITLE IX OF 20 U.S.C.A §168

WHAT IS TITLE IX?

Background

Enacted in 1972, Title IX is a federal civil rights law that applies to educational institutions that receive federal funding, including K-12 and post-secondary public, private, and charter schools in the United States. There are some exceptions, such as military schools and private religious schools.

Title IX prohibits these institutions from denying benefits or treating students differently based on their sex. It was passed to ensure all students had the same rights and abilities to learn and participate in educational programming, regardless of gender or sex.

Many people think Title IX is only about athletics, but this law prohibits discrimination in all educational programs and activities—athletics, academics, clubs, classes, and other school-sponsored activities and programs.

Title IX is clear about its goals, but speaks very little to the specific steps that schools must take to prevent and address sex and gender discrimination. Therefore, since its passage, the U.S. Department of Education has issued numerous documents to explain to schools how to implement and enforce this important law. The Department of Education’s Office of Civil Rights is the official body that investigates schools to make sure that they comply with Title IX. The Office of Civil Rights can also make schools change their policies or procedures if they are not in compliance.

Title IX guidance and enforcement have been influenced by the larger social and political climates spanning close to five decades and ten U.S. presidents. Especially over the last ten years, presidential administrations have frequently updated or changed the guidance, interpretations, and formal rules of Title IX.

Recent Updates

In 2011, the Obama Administration published a “Dear Colleague” letter providing non-binding guidance to institutions of higher education. This letter described institutions’ responsibilities in order to comply with Title IX. The “Dear Colleague” document was important because it helped unite many different regulations and policies



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that the Department of Education had issued over the last 40 years into one cogent set of procedures, which most U.S. colleges and universities adopted.



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After taking office in 2017, the Trump Administration wanted to change some of the guidance given in the “Dear Colleague” letter. The Trump Administration, however, wanted their rules to be more binding. They pursued a formal rule-making process, which was a more time-consuming and complicated course of action, so that their new rules would be more legally binding than the guidance given in the “Dear Colleague” letter. These new rules were issued in May 2020, and took effect in mid-August, 2020.

Some of these changes were more positive, and others more negative. Additionally, some of the Trump Administration’s new, legally binding rules are more flexible than others. However, the new grievance and adjudication process issued under the Trump Administration is very specific. In fact, some of the new regulations associated with this process may interfere with existing state law. This will make Title IX more complicated to enforce.

Several lawsuits were against the Trump Administration’s Title IX regulations. These challenges were brought by organizations including the American Civil Liberties Union, National Women’s Law Center, Victim Rights Law Center, and 18 states’ Attorneys General (including Pennsylvania) and D.C. The Pennsylvania Coalition Against Rape submitted a sworn statement as part of Pennsylvania Attorney General Josh Shapiro’s lawsuit.

The Victim Rights Law Center case resulted in a change to the Trump Administration’s regulations in July, 2021. The federal judge in this case found one part of the Trump Administration’s regulations unconstitutional and sent this provision back to the Department of Education so it could be reconsidered. Judges have also upheld the regulations in court.

Since taking office, the Biden Administration has issued non-binding Title IX guidance and interpretation. However, if the Biden Administration’s guidance conflicts with the Trump Administration’s formal and legally binding regulations, the regulations are more legally powerful.

The Biden Administration is beginning the formal rules-making process, so that they can create legally binding regulations that would override the Trump Administration’s rules. However, this process takes time, and the proposed changes will not likely be announced until at least 2022, and may not take effect until 2023 or later. Until then, the Trump Administration’s Title IX regulations remain in effect.

In the meantime, the Biden Administration has created new guidance in areas of Title IX where the Trump Administration did not create formal rules. For instance, the Department of Education’s Office of Civil Rights issued a Notice of Interpretation stating that LGBTQ+ students will be protected from discrimination on the basis of gender identity or presentation and discrimination on the basis of sexual orientation under Title IX.

[View the U.S. Department of Education's Title IX Resources](#)

HOW DO I KNOW IF MY SCHOOL IS VIOLATING TITLE IX?

Your school has to do a lot of things in order to comply with Title IX. This includes, but isn't limited to:

- Publicize a non-discrimination policy, the Title IX Coordinator's contact information, and how to file a formal Title IX complaint
- Process cases in a reasonably prompt time frame, and with equitable treatment of the respondent and complainant
- Offer supportive measures to all victims who have made formal complaints, including those that choose not to pursue a resolution process
- Training staff as is necessary to maintain an effective Title IX Program
- Have unbiased and impartial Title IX staff with no conflicts of interest
- Ensure that Title IX regulations apply equally to both parties, including acting against selective enforcement of or biased outcomes associated with the Title IX Program
- Act against policies or programs that are explicitly or in effect discriminatory, or that substantially heighten the risk of sexual harassment

If you think your school is violating Title IX, we'd suggest reaching out to an attorney. PCAR offers free and confidential legal services on Title IX through the Sexual Violence Legal Assistance Project. Please be aware that some time limits may apply when creating Title IX violation claims against your school.

WHAT ARE CLIMATE REPORTS UNDER TITLE IX? WHAT ARE GOOD AND BAD SIGNS IN A CAMPUS CLIMATE REPORT?

According to the Clery Act, schools must regularly conduct anonymous climate reports. These reports give a more accurate picture of sexual misconduct occurring on-campus than a tally of cases reported to the Title IX Office. That's because only one in seven cases of sexual misconduct that occur on-campus are reported to the Title IX Office. These climate reports are

important, because they give a better picture of the scale and type of problems a school community is facing. It's hard to fix problems that you aren't aware of or don't understand.

Many people think that low levels of sexual misconduct in climate reports are a good sign. In fact, the opposite is usually true. Many schools consistently report that 0 instances of misconduct occur on their campus; this is never the case, and these reports instead show that the school is interested in ignoring sexual misconduct when it occurs. In fact, schools with higher levels of reported sexual misconduct may actually be safer, because students have a higher level of trust in the institution and are therefore willing to reveal instances of sexual misconduct, and because the school is highly motivated to obtain accurate measurements of sexual misconduct on campus.

WHAT COUNTS AS SEXUAL MISCONDUCT UNDER TITLE IX?

Title IX protects against multiple kinds of discrimination. This includes:

- Sex and gender discrimination
- Gender identity and presentation discrimination
- Sexual orientation discrimination
- Discrimination based on marital, family, or parental status
- Retaliation for attempting to enforce one's rights against discrimination through the Title IX process

Title IX also protects against sexual harassment. Sexual harassment may include:

- A hostile environment; meaning severe, pervasive, and objectively offensive conduct. Sometimes a single act of violence can qualify as a hostile environment, because the effect is pervasive.
- Quid pro quo (trading sexual activity for academic or other benefits provided by someone in authority)
- Gender-based crimes defined by the Clery Act.

Clery Act offenses include:

- Sexual assault – includes the state’s definitions of rape, fondling, incest, and statutory rape.
- Stalking – which may also be considered sexual harassment, and covers a wide range of behaviors like hacking, revenge porn, etc.
- Domestic violence – based on the state’s definition. May include violence perpetrated by current or former spouses, intimate partners, co-parents, etc.
- Dating violence – explicit threats or acts of physical violence, including against a third party or against the perpetrator themselves (threats to commit suicide or self-harm, etc).

HOW DO I REPORT MISCONDUCT TO THE TITLE IX OFFICE?

The first thing you should do is review your school’s policy online and follow their reporting procedure. If you’re not sure what to do, contact your school’s Title IX Coordinator to find out how to report. Your school probably has forms that they would like for you to fill out, and reporting according to their procedure will likely make the process quicker and more efficient.

Reporting sexual misconduct to your school’s Title IX Office is not supposed to be overly complicated. If you feel like your school is making you jump through lots of hoops in order to file your initial misconduct report, or that the process they are making you go through is unnecessarily difficult and time-consuming, you should consider contacting an attorney. Write down the basic who/what/when/ where of the incident in a letter addressed to the Coordinator of your school and sign it (emails and email signatures count!). The Sexual Violence Legal Assistance Project provides free, confidential legal counsel of Title IX cases. Your attorney can help make sure that your complaint is heard.

HOW WILL THE TITLE IX OFFICE HELP ME AFTER I REPORT MISCONDUCT?

Your school has to provide you with supportive

measures once you report that you are a victim of assault, even if you choose not to pursue a formal resolution process. That’s true even if your school or classes are virtual.

These supportive measures are designed to make it possible for you to continue your education. This is true whether or not you continue to pursue a formal complaint process. Some supportive measures may even continue after a decision is made on your case.

Supportive measures aren’t allowed to unreasonably burden either you or the respondent (the person accused of sexual misconduct). That means that these measures can’t cost either party any fees or charges (including for procedures like changing dorms or switching classes), or have a punitive or disciplinary affect.

Supportive measures have to include “reasonably available” accommodations. That means schools can’t refuse to provide a supportive measure simply because they don’t want to set a new precedent for future cases. If the measure is reasonably available for your case, they have to offer it, regardless of the consequences for future cases.

Supportive measures have to ensure the safety of all parties. This means that the school should be trying to keep you and the respondent away from each other, prevent further harassment of you or the respondent, and protect you and the respondent from other events that would prevent you from accessing an education. This aspect of supportive measures can be very difficult for schools to uphold, because they are not allowed to violate students’ rights to freedom of speech, movement, or assembly.

The Title IX Coordinator has to consider your wishes when offering supportive measures. Sometimes it won’t be possible to comply with all of your requests, but the office should try their best to work with you.

If the Title IX Coordinator finds that the respondent in your case poses an immediate and substantial risk to your and/or other’s safety, they may be able to put that person on

administrative leave if they are a staff member, or on emergency removal/interim suspension if they are a student. However, the respondent has to be allowed to immediately appeal that decision.

The Title IX Coordinator will also explain to you how to undergo a formal investigation and adjudication process.

If your school's Title IX office is not offering you supportive measures in line with these principles, you should contact a lawyer.

IF I REPORT MISCONDUCT, WILL THE SCHOOL TELL ANYONE?

The school will investigate your report, which may mean that they will talk to some people who already knew about the misconduct or have relevant information to the case. However, all of the people who file or receive your report have to protect your confidentiality, as well as the confidentiality of the respondent and witnesses.

WHAT HAPPENS AFTER I REPORT MISCONDUCT? WHAT DOES A TITLE IX PROCESS LOOK LIKE?

After the Title IX Coordinator receives your formal complaint, they will work with you to offer supportive measures. They will also explain how the complaint process will look at your school. Many schools offer both an informal resolution process and a formal resolution process. Your coordinator may ask whether you'd rather pursue a formal or informal process (if you are a student and the respondent is a staff member, you have to pursue a formal process).

Informal processes look different at every school. If you choose to pursue an informal process, you can switch back to a formal process at any time before the informal process is complete. You can also usually defer to an informal resolution process at any point in the formal resolution process before a final decision is made.

If you choose to pursue a formal process, you are allowed to have two people present at every meeting: an advisor (like an attorney) and an

emotional support person. If you can't afford an advisor, the school has to pay for one for you. The Sexual Violence Legal Assistance Project also provides free, confidential legal assistance in Title IX cases.

First, the school will investigate your claim. Then, the school will adjudicate your claim; that means that they will look at the evidence found during the investigation, and decide whether the respondent was responsible for the conduct in your report. Finally, the school will determine any outcomes, like punishments or remedy measures that will continue once the complaint process is over.

In general, this process should be prompt. If you feel that your investigation or adjudication process is moving extremely slowly (significantly longer than two to three months), you may want to contact a lawyer, particularly if these delays are interfering with your education.

MY SCHOOL WANTS ME TO SIGN A NON-DISCLOSURE AGREEMENT (NDA). SHOULD I DO THAT?

Some schools may ask you to sign a non-disclosure agreement as a part of the investigation or adjudication process. If your school asks you to do that, contact a lawyer before you decide whether or not to sign. The Family Educational Rights and Privacy Act (FERPA) already provides some privacy protections around Title IX cases; a non-disclosure agreement is not always necessary, and sometimes, not a good idea.

WHAT DOES A TITLE IX INVESTIGATION LOOK LIKE?

The Title IX Office will conduct a thorough investigation into the misconduct, which might take some time.

The investigation will involve finding evidence. To maintain impartiality, investigators are required to assume that the misconduct occurred but that the respondent is not necessarily responsible. Please remember

that your school's Title IX office is responsible for conducting a thorough investigation; if it seems that they are making you responsible for investigating your case, contact a lawyer.

Once the investigator has collected all of the evidence, both you and the respondent have the opportunity to review all of the evidence and respond to it. If the investigation shows that your case is part of a pattern, your complaint may be consolidated with other, similar complaints. The investigator will then complete an investigation report.

I'VE ASKED FOR HELP FROM A RELIGIOUS LEADER, DOCTOR, LICENSED THERAPIST, OR OTHER PRIVILEGED PERSON TO DEAL WITH MY ASSAULT. CAN THE TITLE IX OFFICE TALK TO THAT PERSON AS PART OF THEIR INVESTIGATION?

If you have accessed help from religious leaders, doctors, licensed therapists, or other people that have a legal duty to maintain your confidence, the investigator is only allowed to talk to those people if you give your permission and say that it's ok. If you're in a position where you need to make that decision, contact a lawyer.

WHAT DOES A TITLE IX ADJUDICATION LOOK LIKE?

Adjudication takes place after the investigation and looks different at every school. At most schools, the adjudication phase involves a live hearing. Live hearings can look very different at different schools, and sometimes take place through virtual technology, like Zoom. Frequently, the hearing will allow the school to present witnesses, evidence, etc. to an adjudicator(s) (an impartial third party, not the Title IX Coordinator). It's also common for the Title IX Coordinator, your advisor, or the respondent's advisor to ask you, the respondent, and relevant witnesses to answer questions. It's important to note that the respondent, Title IX Coordinator, your advisor, and the respondent's advisor are not allowed to ask about your past sexual behavior or predisposition (with a few small exceptions).

Your school will probably have other rules about how hearings are conducted, and hearings at your school may look different than what's described here.

WHAT HAPPENS AFTER MY HEARING?

Once the hearing is complete, two things will happen: the adjudicator(s) will make a decision and write a report. These processes can happen in a few minutes or over a few weeks, and one may happen before or after the other.

Generally, the adjudicator(s) will create a report summarizing the evidence that was introduced during adjudication.

The adjudicator(s) will also make a decision about your case. They will decide based on either "the preponderance of the evidence" or "clear and convincing evidence" standard whether the respondent is at fault for the misconduct alleged. The adjudicator will announce their decision and any outcomes (like possible remedies or disciplinary or supportive measures) to both you and the respondent simultaneously.

After the decision is made, the adjudicator(s) will write an outcome report that includes a summary of the allegations, procedural history of your case, facts that support their decision, how the school's code of conduct applies, the rationale for their decision, and how to appeal.

Your school may want to schedule a follow-up appointment with you after the outcome report is published.

WHO IS RESPONSIBLE FOR CARRYING OUT THE DECISIONS MADE IN TITLE IX CASES?

The Title IX Coordinator is responsible for implementing the outcomes of decisions of Title IX cases. They have to make sure to carry out any remedies that the adjudicator said you were to receive, in order to restore and preserve your access to your education and any related programs and activities. This can also make the

Title IX Coordinator responsible for upholding disciplinary or punitive measures against the respondent.

CAN I QUIT THE TITLE IX COMPLAINT PROCESS AFTER I START?

Most of the time, victims can decide not to pursue the Title IX complaint process once they've started, and the case is dismissed. However, a Title IX Coordinator may sometimes choose to continue a case over the victim's wishes. This is especially likely if the respondent is a suspected serial perpetrator, or is likely to victimize other students. Coordinators can do this because Title IX exists to protect all students from discrimination and harassment, not just those students that have filed formal complaints.

IS MY SCHOOL'S TITLE IX OFFICE ALLOWED TO DISMISS MY CASE?

Title IX Complaints can be dismissed for a few reasons, including:

- the incident in your report happened outside the US (for instance, while studying abroad)
- the victim is no longer in the school's educational environment or activity. There are exceptions for this if the student wants to return, was a prospective student, or would like to pursue post-graduation educational programming or activities (like school-endorsed alumni events or associations).
- the respondent is no longer in the school's educational environment or activity. Schools can dismiss a case for this reason, but don't have to.
- the conduct described in the report does not fall under the purview of Title IX. If this is a case, there may be other ways to address the misconduct the victim experienced.
- the incident happened outside the educational environment. If this is the reason given, you may want to consult a lawyer. Title IX defines the educational environment very broadly, and includes incidents that

occur in honors housing, informal activities on-campus (like pickup basketball), and many other situations.

- there is an inability to recover evidence about the event. This is very rare, and if this is the reason given, you may want to consult a lawyer.

WHEN AM I ALLOWED TO APPEAL THE DECISION OR DISMISSAL OF MY CASE?

Appeals processes are different at different schools. However, most schools do have a window for filing appeals. In many institutions, once this window passes, you can no longer file an appeal. Your school should describe the appeals process to you and the respondent during the final decision report.

Both you and the respondent can appeal a dismissal or decision if you think that a procedural irregularity affected the institution's decision or dismissal, if new evidence comes up that wasn't available at the time of the decision or dismissal, or if the Title IX personnel had a conflict of interest or bias that affected the decision or dismissal of the case. If you'd like to pursue an appeal, you should contact a lawyer.

If you or the respondent decide to appeal, the other party will be notified in writing when the appeal is filed. If the respondent requests an appeal, make sure to ask for a copy of all related paperwork. A new decisionmaker will be chosen for the appeals process. You and the respondent will both be allowed to submit a written statement to this new decisionmaker supporting or challenging the original outcome. The appellate decisionmaker will then issue a written appellate decision simultaneously to both you and the respondent.

WHAT DOES THE SCHOOL DO WITH RECORDS RELATED TO TITLE IX CASES?

Schools have to maintain all records related to a Title IX proceedings according to state record-keeping laws for seven years after the decision is reached. This includes all physical, electronic,

video, and audio records, as well as transcripts. These records continue to be confidential.

Records will generally discuss supportive measures, informal resolution process if applicable, hearing and formal outcome if applicable, and appeals if applicable.

THIS GUIDE SHOULD NOT BE USED AS LEGAL COUNSEL OR ADVICE

Every school is different, and every case is unique. If you are undergoing the Title IX process and have questions or need help, free and confidential legal assistance is available through the Sexual Violence Legal Assistance Project. Please call 717-901-6784 or 1-800-692-7445 x190 or visit www.pcar.org/help-pa/sexual-violence-legal-assistance-project to learn more.

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