

2022 Title IX Proposed Changes Overview

This document is an overview of the Notice of Proposed Rulemaking (NPRM) released June 23, 2022 about changes to Title IX of the Education Amendments Act of 1972. The Office of Higher Education does not interpret the changes or make inferences of the effects of the proposed changes.

Major Changes to Title IX

- Broadens the scope of sex discrimination to include pregnancy and parenting discrimination, characteristics of sex, gender identity, sexual orientation, and sex-based harassment (used to be known as sexual harassment).
- Aligns Title IX with other Civil Rights laws such as Title VII, VI, Section 504 of the Rehabilitation Act of 1973.
- Requires institutions to “promptly and effectively” respond to sex discrimination. It includes details of how employees must respond when told about sex-based harassment or sex discrimination; and training requirements for all students and employees.
- Includes a response by institutions to sex-based harassment and discrimination that occurs off campus or outside of the United States if a hostile environment is created within the education program or activity.
- Gives institution choices on how to respond to sex discrimination, including grievance procedures and informal resolution.
- Explains what needs to be included in the informal resolution and grievance procedures.
- Clarifies protections and processes for students with disabilities and pregnant and parenting students.
- Protects students who identify as transgender or nonbinary to access same-sex facilities that of their gender identity.
- Strengthens protections with regard to retaliation.
- Treats complainant and respondent equitably throughout the process.

Title IX NPRM Does Not Address

- Religious Exemption
- Gender Identity and Participation in Intercollegiate Athletics

Submit Your Comments

<https://www.regulations.gov/document/ED-2021-OCR-0166-0001>

Resources

- How to Submit an Effective Comment
- Rulemaking Process <https://www.regulations.gov/learn>
- Informal Rulemaking Graphic by Regulations.gov <https://www.reginfo.gov/public/reginfo/Regmap/index.jsp>
- Title IX Notice of Proposed Rulemaking “Nondiscrimination on the Basis of Sex in Education Program or Activities Receiving Federal Financial Assistance”

Table 1 - Title IX Overview of Proposed Changes to Regulations

General Topic	Current Regulations	Proposed Regulations	What does the changes mean?
Title IX Scope & Definitions	<p>Covers only sexual harassment, which is, 1) a request by an employee who has power at the institution, offers a benefit or aid such as a higher grade or a raise to a student or employee if they would do a sex-based act (called <i>quid pro quo</i>); 2) sexual assault, domestic violence, dating violence and stalking; 3) unwelcome conduct on the basis of sex that is <i>severe, pervasive and objectively offensive</i> it denies access to education programs or activities.</p> <p>The sexual harassment must be in the United States and the institution must have control over the person who is alleged to have done the misconduct</p>	<p>Covers sex discrimination as different treatment on the basis of sex, sexual orientation, gender identity, pregnancy or pregnancy related conditions. It includes, 1) <i>quid pro quo</i> (see <i>definition in the right column</i>); 2) Sexual assault, dating violence, domestic violence, and stalking; 3) “Sex-based harassment” (formerly sexual harassment) is defined as unwelcome sex-based conduct that is <i>severe or pervasive</i>, that based on the totality of circumstances and evaluated subjectively and objectively, denies or limits access to an education program or activity (hostile environment).</p>	<p>Broadened definition of hostile environment</p> <p>Allows institutions to define consent.</p> <p>Prohibits sex-based harassment that happens online or off campus that it affects the education program or activity.</p>
Institutional Response to Sex Discrimination	<p>Institutions must act when they have “actual knowledge” of an incident of sexual harassment.</p> <p>Requires institutions to dismiss a complaint if the incident does not rise to the definition of sexual harassment</p>	<p>All employees have to report or give contact information about the Title IX Coordinator except confidential employees.</p> <p>Confidential employees are employees like counselors and clergy; employees designated by the institution to help students or employees who experienced sex-based discrimination; or people doing research about sex-based discrimination.</p>	<p>Institutional leaders, teachers, advisers, coaches or club advisers must to report any sex discrimination claims to the Title IX Coordinator.</p> <p>Institutions can designate certain employees who are not counselors, as confidential to students and employees for sex-based discrimination support.</p>
Title IX Coordinator Duties	<p>Offer Supportive Measures to the complainant, oversee the Title IX grievance process.</p>	<p>The Title IX coordinator must monitor barriers to reporting, coordinate supportive measures, and oversee the Title IX grievance process.</p>	<p>Ensure the process is fair and equitable, without bias.</p>
Training	<p>Training is required for investigators, decision-makers and Title IX coordinators involved in the grievance process.</p>	<p>Training is required for all employees of an institution.</p>	

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Supportive Measures	Title IX Coordinator offers supportive measures or adjustments to classes, activities or living on campus, to the complainant with or without a signed formal complaint.	Employees other than the Title IX Coordinator can issue supportive measures and adjustments.	A supportive measure can burden the respondent temporarily during a grievance process.
Grievance Process	Requires a formal complaint signed by the Complainant or Title IX Coordinator to begin a grievance process.	A complaint can be told to the Title IX Coordinator or written.	
Resolution Options	Begins with notice to both parties and then an investigation; a review of all evidence must be available to parties; a live hearing with cross-examination by a parties' advisor; the decision is determined by a decisionmaker, who is not the Title IX Coordinator or investigator; the standard of proof is determined by the institution and must be consistent to all other discipline standards between employee and student conduct.	<p>The process to resolve <u>all</u> allegations of sex-based discrimination and sexual harassment for elementary and secondary schools and for employees is under 106.45. The major changes to this section include:</p> <ul style="list-style-type: none"> • The Title IX Coordinator may serve as decisionmaker or investigator or both. • A standard of proof is “Preponderance of the Evidence” unless an institution already had another standard of proof for other code of conduct or similar procedures. <p>Requires a process to review the credibility of evidence and statements.</p>	Ensures and explains protections of privacy during the grievance process
Informal Resolution	Informal resolution is not clearly defined, but available to resolve reports of sexual harassment.	<p>Informal Resolution Proposed Process (106.44) can begin at any time, even before a complaint is started. The Title IX coordinator must get in writing both parties' voluntary participation before beginning an informal resolution and provide specific information:</p> <ul style="list-style-type: none"> • Either party can stop an informal resolution and ask for a grievance process. • Complainants still have the right to seek a criminal process even though they participated in an informal resolution. • Detailed description of the informal process to be used, who the facilitator is, and people are involved 	<p>Informal resolutions cannot offer a supportive measure that is a burden on the respondent.</p> <p>The Title IX Coordinator must make sure the person who facilitates informal resolution is not an investigator or decisionmaker assigned to the case</p> <p>Information gathered from the informal resolution cannot be</p>

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		The Title IX Coordinator must keep a record of any informal resolution	used in the investigation or decision of a grievance process
Postsecondary Institutions Grievance Process	There is not a separate grievance process from K -12 in the 2020 Regulations. Postsecondary institutions must facilitate a live hearing with cross examination.	<p>The process for postsecondary institutions to resolve sex-based discrimination is under 106.45 and 106.46. These procedures include:</p> <ul style="list-style-type: none"> • Equitable treatment and access for the complainant and respondent. • Written notice of allegations, interview, timeline delays, and outcome to both parties. • Ability to review and respond to relevant evidence. • An advisor (support person) at every meeting <p>Institutions can decide whether to use a live hearing with cross-examination, or another method to ask questions of parties and witnesses</p>	
Protections and Procedures for Students with Disabilities and Pregnant and Parenting Students	There is currently no guidance on how to respond to pregnant and parenting students, nor is there guidance of how to an equitable grievance process for a student with a disability participating in the grievance process.	<p>Title IX coordinators may consult with disability resource offices on campus to make sure the complainant or respondent has full access to the process.</p> <p>Pregnant women, women with pregnancy related conditions, recovery from birth, or pregnancy termination cannot be treated differently than non-pregnant students, and have the ability to use reasonable modifications to the education program, activities, policies and procedures.</p>	<p>An individualized assessment must occur to determine whether a modification is denied and justify the decision.</p> <p>Offer the same treatment and processes to pregnant/pregnancy-related conditions as students with temporary disabilities.</p>
Protected rights of transgender and nonbinary students	There is currently no guidance on this issue.	Students who identify as transgender or nonbinary have the right to access the restroom and same-sex facilities of their gender identity, not sex assigned at birth.	This proposed regulation does not cover participation in intercollegiate athletic programs.