

1. WHAT IS TITLE IX?

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 EDUCATION PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE.

2. WHAT DOES THAT INCLUDE?

- The Final Rule defines sexual harassment broadly to include any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect: **Any instance of *quid pro quo* harassment by a school's employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).**
 - University policy Policy #0-004 provides further definitions of prohibited conduct.
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3. WHO DOES IT APPLY TO?

- Students enrolled at the university
 - Employees employed by the university
 - *The Title IX statute applies to persons in the United States with respect to education programs or activities that receive Federal financial assistance. Under the Final Rule, schools must respond when sexual harassment occurs in the school's education program or activity, against a person in the United States.*
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4. WHAT ARE THE UNIVERSITY'S PROGRAMS AND ACTIVITIES?

- Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (such as a fraternity or sorority house).
 - Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus. A school may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.
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5. WHAT DOES THAT MEAN FOR THE UNIVERSITY?

- Schools must respond promptly to Title IX sexual harassment in a manner that is not **deliberately indifferent**, which means a response that is not clearly unreasonable in light of the known circumstances.
 - Schools must offer supportive measures to the person alleged to be the victim (referred to as the "complainant").
 - **For all schools, notice to a Title IX Coordinator, or to an official with authority to institute corrective measures on the recipient's behalf, charges a school with actual knowledge and triggers the school's response obligations.**



- For postsecondary institutions, the Final Rule allows the institution to choose whether to have mandatory reporting for all employees, or to designate some employees to be confidential resources for college students to discuss sexual harassment without automatically triggering a report to the Title IX office.
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Definitions:

- Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- Respondent: as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- Witness: an individual who has direct knowledge of or information about the allegation being made.
- Preponderance: the standard against which information and evidence gathered during the investigation is assessed. The preponderance of evidence standard means “more likely than not”

6. WHAT IS THE GENERAL PROCESS OF AN INVESTIGATION?

1. Review all relevant case files shared by TIX Coordinator.
2. Investigative team meeting to develop case plan
3. Reach out to Complainant to schedule interview.
 - a. Write interview questions.
 - b. Interview Complainant.
4. Reach out to key witnesses to schedule interviews.
 - a. Write interview questions.
 - b. Interview witnesses.
5. Reach out to Respondent to schedule interview.
 - a. Write interview questions.
 - b. Interview Respondent.
6. Gather and review all relevant evidence.
7. Compare notes with co-investigator.
8. Send first draft of FIR to senior deputy.
9. Send final draft of FIR to senior deputy.
10. Send final draft of FIR to TIX Coordinator.
11. Send synchronized Notice of Final Report to Complainant and Respondent.
12. Review FIR with Complainant and Respondent.
 - a. 10 days to review, inspect and respond to evidence.
 - b. 10 days to review, inspect and respond to investigative report. with at least *10 days* for the parties to inspect, review, and respond to the evidence.

7. WHAT HAPPENS NEXT?

- Live Hearings
 - At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
 - Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant.
 - If a party does not have an advisor present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party.
 - The Final Rule states that a school must offer both parties an **appeal** from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the *following bases*: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.

8. WHAT ARE THE IMPORTANT ASPECTS OF THE INVESTIGATION?

- the school must investigate the allegations in any formal complaint and send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint. During the grievance process and when investigating:
 - The **burden** of gathering evidence and burden of proof must remain **on schools**, not on the parties.
 - Schools must provide **equal opportunity for the parties** to present fact and expert witnesses and other inculpatory and exculpatory evidence.
 - Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (*e.g., no “gag orders”*).
 - Parties must have the same **opportunity to select an advisor** of the party’s choice who may be, but need not be, an attorney.
 - Schools must send written notice of any investigative interviews, meetings, or hearings.
 - Schools must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.
 - Schools must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.
 - Schools **must** dismiss allegations of conduct that do not meet the Final Rule’s definition of sexual harassment or did not occur in a school’s education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate.
 - Schools **may**, in their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.



- Schools must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.
- Schools **may**, in their discretion, consolidate formal complaints where the allegations arise out of the same facts.
- The Final Rule protects the privacy of a party's medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the school obtains the party's voluntary, written consent to do so.
- Treat complainants equitably by providing remedies any time a respondent is found responsible, and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process prescribed in the Final Rule.
- Require **objective evaluation of all relevant evidence**, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.
- Require Title IX personnel (Title IX Coordinators, investigators, decision-makers, people who facilitate any informal resolution process) to be **free from conflicts of interest or bias for or against complainants or respondents.**
- Include a **presumption that the respondent is not responsible** for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Include reasonably prompt time frames for conclusion of the grievance process, including appeals and informal resolutions, with allowance for short-term, good cause delays or extensions of the time frames.
- The Final Rule provides rape shield protections for complainants, deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.