

U.S. Department of Education Proposed Title IX Regulation Fact Sheet

Guiding Principles

- **Rulemaking Process:** It is important to address this issue through notice-and-comment rulemaking rather than non-binding guidance. The Department looks forward to the public’s comments, and has benefitted from listening sessions and discussions with students, schools, advocates, and experts with a variety of positions.
- **Greater Clarity:** The proposed regulation seeks to ensure that schools understand their legal obligations and that complainants and respondents understand their options and rights.
- **Increased Control for Complainants:** The Department recognizes that every situation is unique and that individuals react to sexual harassment differently. The proposed regulation seeks to ensure that schools honor complainants’ wishes about how to respond to the situation, including increased access to supportive measures.
- **Fair Process:** The proposed regulation is grounded in core American principles of due process and the rule of law. It seeks to produce more reliable outcomes, thereby encouraging more students to turn to their schools for support in the wake of sexual harassment and reducing the risk of improperly punishing students.

Nature of a School’s Response to Sexual Harassment & Assault

- The proposed regulation would adopt a clear definition of sexual harassment actionable under Title IX:
 - A school employee conditioning an educational benefit or service upon a person’s participation in unwelcome sexual conduct (often called **quid pro quo harassment**);
 - Consistent with U.S. Supreme Court precedent, unwelcome conduct on the basis of sex that is so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school’s education program or activity; or
 - **Sexual assault**, as the Clery Act defines that crime in 34 CFR 668.46(a).
- Consistent with Supreme Court precedent and the text of Title IX, a school would be obligated to respond when: (1) the school has **actual knowledge** of sexual harassment; (2) that occurred within the school’s own “**education program or activity**”; (3) against a “**person in the United States.**”
- Consistent with U.S. Supreme Court precedent, the proposed regulation would hold a school liable under Title IX only when it is “**deliberately indifferent**” to known sexual harassment, meaning its response is “**clearly unreasonable in light of known circumstances.**”
- The proposed regulation would require schools to investigate every **formal complaint** and to **respond meaningfully to every known report of sexual harassment.**
- The proposed regulation highlights the importance of **supportive measures** designed to preserve or restore access to the school’s education program or activity, with or without a formal complaint.
- Where there has been a finding of responsibility, the proposed regulation would require **remedies designed to restore or preserve access** to the school’s education program or activity.

Due Process Protections & Reliable Outcomes

- To achieve fairness and reliable outcomes, the proposed regulation would require **due process protections**, including:
 - A **presumption of innocence** throughout the grievance process, with the **burden of proof on the school**;
 - **Live hearings** in the higher education context;
 - A **prohibition of the single-investigator model**, instead requiring a decision-maker separate from the Title IX Coordinator or investigator;
 - The clear and convincing evidence or preponderance of the evidence standard, subject to limitations;
 - The opportunity to **test the credibility** of parties and witnesses through **cross-examination**, subject to “rape shield” protections;
 - Written **notice of allegations** and an equal opportunity to **review the evidence**;
 - Title IX Coordinators, investigators, and decision-makers **free from bias or conflicts of interest**; and
 - **Equal opportunity for parties to appeal**, where schools offer appeals.