

Dickinson

Title IX - Proposed Federal Regulations

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Agenda

Title IX

Notice and Comment Process

Definitions

Substantive Changes

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Title IX

Title IX is a federal civil rights law that was passed as part of the Education Amendments of 1972.

Title IX states that 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.

Notice and Comment Process

- On September 22, 2017, the Department of Education rescinded previous guidance documents that did not have the benefit of the public notice and comment process ([April 4, 2011 Dear Colleague Letter](#) and the [April 29, 2014 Q& A on Title IX and Sexual Violence](#)).
- On September 22, 2017, the Department of Education also released the [Q&A on Sexual Misconduct](#) as interim guidance.
- On November 29, 2018, the Secretary of Education proposed to amend regulations implementing Title IX of the Education Amendments of 1972 (Title IX).
- **The Department of Education must receive comments on or before January 28, 2019.**

Definitions

Complainant: An individual who requests the College's resolution process.

Respondent: Any individual(s) or organization(s) alleged to have violated the Sexual Harassment and Misconduct policy and against whom a complaint has been brought to the attention of the College.

Advisor: Throughout the investigation and resolution of a complaint, the Complainant and Respondent have the right to be assisted by an advisor of their choice. The advisor may be any person, including an attorney engaged at the party's expense, who is not otherwise a party or witness in the investigation.

Definitions Continued

Review Panel (for complaints against students). Comprised of three College employees (faculty and staff), who are designated by the Title IX Coordinator to review the investigation report and all relevant materials and decide whether policy has been violated, and if so, determine sanctions.

Reviewing Authority: (for complaints against employees, including faculty). A staff member in authority who is designated by the Title IX Coordinator to review the investigation report and all relevant materials and decide whether policy has been violated.

Substantive Changes

- Definition of “Sexual Harassment”
- Notice/Knowledge
- Scope – Context and Geography
- Standard of Response – (Care, Support, Adjudication)



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Substantive Change – Definition of Sexual Harassment

Current	Proposed Regulations
Unwanted conduct of a sexual nature.	<ol style="list-style-type: none">1) Conditioning provision of aid, benefit, or service on participation in unwelcome sexual conduct. (i.e. “Quid pro quo”).2) Unwelcome conduct that is so severe, pervasive, and objectively offensive that it denies access.3) Sexual Assault.

Substantive Change – Notice

Current

“...knows or reasonably should know...”

Proposed Regulations

“Notice...to an official who has authority to institute corrective measures.”

Substantive Change – Context

Current

Regardless of where the conduct occurs, the school must process the complaint.

Proposed Regulations

Only responsible for responding to conduct that occurs ***within “educational program or activity” and “in the United States.”***

Substantive Change – Process

Current
Must take immediate and appropriate steps to investigate or otherwise determine what occurred.

Proposed Regulations
Required to investigate only formal complaints.

✓ **Current process**

Incident reported



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graph TD; A[Incident reported] --> B[Information reviewed by Title IX Coordinator (TIXC)]; B --> C[TIXC sends email to individual and offers to meet to discuss options/resources];
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Information reviewed by Title IX
Coordinator (TIXC)

TIXC sends email to individual and offers
to meet to discuss options/resources

Substantive Change – Informal Resolution

Current

In cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis.

Proposed Regulations

Any allegation may be resolved through an informal resolution/mediation, with voluntary written consent from both parties.

Supportive Measures

- ✓ Counseling (Wellness Center/Employee Assistance Program)
- ✓ 24/7 YWCA Advocacy Hotline
- ✓ Domestic Violence Services
- ✓ Extensions of deadlines or other course-related adjustments
- ✓ Modifications of work or class schedules
- ✓ Campus escort services
- ✓ Mutual restrictions on contact between the parties
- ✓ Changes in work or housing locations
- ✓ Leaves of absence
- ✓ Increased security and monitoring of certain areas of the campus
- ✓ The TIX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Substantive Change - Adjudication

Current

- Investigation
- Review Panel/Reviewer
- Review investigative packet (all reports, statements, evidence)
- Parties, their Advisors and any witnesses do not meet with the Review Panel/Reviewer

Proposed

- Investigation
- ***Hearing Panel***
- Review investigative packet (all reports, statements, evidence) ***and live hearing***
- ***Parties, their Advisors and any witnesses meet with the Hearing Panel.***
- ***Advisors can cross-examine***

Substantive Change - Timeline

The proposed regulations do not specify a time period for resolving complaints, but institutions ***must designate and follow a reasonably prompt time frame for the major stages of the complaint process.***

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Substantive Change - Notice of Allegations

Upon receipt of a formal complaint, a recipient must provide written notice to the parties of the recipient's grievance procedures and of the allegations.

Such notice must include:

- ✓ sufficient details (such as the identities of the parties involved in the incident, if known)
- ✓ the specific section of the recipient's code of conduct allegedly violated
- ✓ the conduct allegedly constituting sexual harassment under this part and under the recipient's code of conduct
- ✓ the date and location of the alleged incident, if known
- ***a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process***
- ***a statement that the parties may request to inspect and review evidence prior to completion of the investigative report***
- ***a statement that the code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process.***

Standard of Evidence

*An institution “**must apply either the preponderance of the evidence standard or the clear and convincing evidence standard.**”*

How to Comment

Click here to go to the: [Proposed Rule](#)

Dickinson College: commentsT9@dickinson.edu

Please submit your comments to Dickinson College by January 14, 2019.

Department of Education: www.regulations.gov

By Mail:

Brittany Bull

U.S. Department of Education

400 Maryland Avenue S.W.

Room 6E301

Washington, D.C. 20202

Due on or before January 28, 2019.

If you are in need of assistance or resources, please visit our website at <http://www.Dickinson/titleix>.