



Students Beware: Fewer Title IX Protections, Hostile Process for Survivors

What is happening with Title IX?

The U.S. Department of Education (DoED) recently announced that it will not adopt a revised regulation under Title IX to address serious issues with the existing rule until May of 2022. During the Trump Administration with Betsy DeVos as Secretary of the Department, a revision of Title IX relating the sexual harassment and violence significantly limited protections for students. The new rule strictly limited the ability of survivors of harassment and violence to report incidents and have their complaints considered and resolved by their school administration. After issuing the proposed rule and seeking public input (thousands of supporters of a strong Title IX, including NOW, commented in opposition to the changes), the Trump/DeVos Administration failed to make any significant revisions. The new restrictive rule went into effect on August 14, 2020, after a transition period that began in May 2020, when the rules were first released.

Protective Interim Rule Needed – Because revising federal rules/regulations takes many months to accomplish, it is likely that changes made by the Biden Administration will not be formally adopted until early 2024. NOW and allies argue that those who are experiencing sexual harassment and violence need protections right now. They cannot wait two years to access proper support and justice. In a joint letter, we have urged President Biden and the department to take immediate action to protect women facing sexual violence in their schools, an interim rule needs to be implemented. The ability for girls and young women to pursue their education depends on this.

False Information Led to Fewer Protections – In recent years, disinformation spread by conservative opponents of Title IX resulted in the Trump/DeVos Administration's undermining of Title IX's guidance on addressing sexual harassment and violence. These lies and distortions made it seem that young men are at high risk of being prosecuted for false sexual assault or harassment claims. Several conservative organizations representing male students making these claims had easy access to DoED officials and, reportedly, helped write the new restrictive rule, which makes it difficult for survivors of violence and harassment to have their complaints fairly heard and resolved. Claims by the young men about their supposed unfair treatment

under Title IX had little merit, but access to education officials and antipathy to equal education by the Trump Administration resulted in the very serious weakening of Title IX's protections.

What changed under the Trump Administration?

When Trump took office, he immediately withdrew the Trump/DeVos Title IX guidance. Title IX was reverted to its pre-Obama form until the DoED under Betsy DeVos released its new rule in May 2020. That revision stripped Title IX of its power and turned the process against victims.

Problems with the Trump/DeVos Rule - To start, schools had previously been required to respond to any harassment or violence that impeded education. Now, they only must respond to violence that constitutes a sexual assault as defined by the Clery Act or as domestic violence, dating violence, or stalking as defined by the Violence Against Women Act. This greatly reduces the scope of Title IX, especially in instances of sexual harassment that have not yet escalated to assault. Additionally, they only need to respond to reports that have been given to the correct person. In schools from K-12 grade, this can be any teacher. In colleges and universities, it must be an individual with the authority to act on behalf of the school in Title IX cases. Schools often lack Title IX Coordinators who can handle this or put individuals in the position who have no training in the area. Off-campus instances of sexual violence no longer apply under Title IX. It must have taken place on campus or within an educational program or activity sponsored by the school, otherwise they cannot respond to it.

New Procedure Hostile to Complainants - Schools have also had to address sex discrimination, racial discrimination, and disability discrimination with the same standards. Procedures in sex discrimination cases are now complainant-hostile in ways that victims of other forms of discrimination do not face. Victims must now prove that they have faced more significant harm than victims of other types of harassment do. They must also face adversarial cross-examination, questioning from their assailant or their representatives, which is not required of victims of physical assault. This can cause potential emotional harm or trauma to victims, as well as perpetuating the idea that victims of sexual assault or more likely to lie. The standard of evidence has also been changed from the norm of civil cases, preponderance of evidence, to "clear and convincing" standard which is more in line with the beyond a reasonable doubt standard of criminal trials.

Favoring the Accused Over the Complainant - Regarding investigations, schools cannot create timelines for completing them and may draw them out indefinitely if they choose. Schools must

carry out investigations under the assumption that the accused is innocent. This begins an investigation already not believing the victim. During these, both parties must have access to all evidence, even if it is irrelevant or shames the victim. Support cannot be given to the complainant if it is disciplinary or unreasonably burdensome to the respondent.

Unregulated mediation is another option schools can take. This can be used even in cases of dating and sexual violence, though not in instances where the accused is a teacher. Schools may also file for a religious exemption after finding out that they are under investigation for not following the rules of Title IX when they had previously been required to file beforehand. This gives schools leeway to get out of investigations and losing their funding.

The new rule omitted previous protections specifically for LGBTQ+ students as well.

How do these Lessened Protections Affect Victims?

These changes have already resulted in significantly fewer respondents in sexual harassment investigations facing any discipline. This is both because schools are taking little action and victims are reporting less. School administrators often punish victims for coming forward, concluding that they engaged in “consensual” sexual activity or that they are lying. They are also punished for physically defending themselves, missing school in fear of their attacker, or talking to other students about their harassment. This has led to victims of sexual harassment becoming more likely to be the ones to drop out of school, with one in three victims doing so.

Provisions in New Rule Disadvantage Groups - These patterns are typically worse for women and girls of color, LGBTQ+ students, pregnant and parenting students, and disabled students, all of whom face stereotypes that label them as promiscuous, less credible, or less “deserving” of protection. They are then disproportionately affected with resulting lower grades, lost scholarships, lost degrees, and high student loan debt faced by victims.

Rule has Elements of Racial Discrimination - This has made Title IX protections a racial justice issue. Black and brown survivors are significantly less likely to come forward about harassment they are facing. When they do, they are also more likely to be pushed out of their schools. This is made worse in that women of color are disproportionately targeted for sexual harassment. Due to systemic racism and discriminatory stereotypes, they face unique barriers to accessing help that other women do not. The intersectional experience of race and sex discrimination leads school administrators to view them as untruthful or responsible for the violence they have faced.

What is Being Done?

The Department of Education is reviewing the rules Trump put into place and will issue a new guidance that suspends, revises, or rescinds them if they are not consistent with the guarantee that students pursue education free of sex discrimination. Once the rule changes are draft, they will be made available for public review. The department then reviews all the comments (thousands were submitted during the previous comment period). These rules will not be adopted until May 2022 and may take considerable time after to go into effect. A number of lawsuits are being considered regarding the current rules as well.

Interim Rule Needed Now- For Biden to truly protect students in the meantime, he must release an interim rule that prevents students from being cross-examined by their abusers and punish them for coming forward. Schools must also be required to take accusations seriously and complete investigations in a timely manner.

Students are facing sexual harassment now. They need protection now, too.

What Can I Do?

Use social media to spread the word about the need for interim rules on Title IX. You can also call your representatives in the [Senate](#) and [House](#) to let them know that action must be taken.

What resources are available?

[Know Your IX](#)

[FAQs on Title IX and Supportive Measures for Students in K-12 and Higher Education | NWLC](#)

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