

THE NEW TITLE IX RULE

U.S. Education Secretary Betsy DeVos released new Title IX guidance. Here are the major changes.

OLD LANGUAGE

NEW LANGUAGE

Definition of Sexual Harassment

"...unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment prohibited by Title IX."

"...any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access."

Reporting

"OCR deems a school to have notice of student-on-student sexual violence if a responsible employee knew, or in the exercise of reasonable care should have known.... The school may also receive notice about sexual violence in an indirect manner, from sources such as a member of the local community, social networking sites, or the media."

"For all schools, notice to a Title IX Coordinator, or to an official with authority to institute corrective measures... charges a school with actual knowledge and triggers the school's response obligations."

Standard of Evidence

"In order for a school's grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred)."

"The Final Rule requires the school's grievance process to state whether the standard of evidence to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard. The Final Rule makes each school's grievance process consistent by requiring each school to apply the same standard of evidence for all formal complaints of sexual harassment...."

Cross-Examination

"OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment."

"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. Such cross-examination...must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally."