

NPRM/Title IX: Submitting Feedback for 60-day comment period

What is Title IX and how does it impact our campus?

Title IX of the Education Amendments Act of 1972 is a federal law that states: "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."

On November 29th, 2018, the Department of Education ("ED") published a proposed regulation that would dramatically alter schools' responsibilities under Title IX, a federal law that bars recipients of federal funds from engaging in sex discrimination. You can read the document [here](#). Title IX has provided students and their families an opportunity to seek support, protections and a process to mitigate the impacts of sexual harassment and violence, including sexual assault, dating/domestic violence and stalking.

What's changing with the new proposed guidance?

1. **Narrowing definition of harassment:** §§ 106.30, 106.45(b)(3) - would only require schools to only investigate the most extreme forms of harassment and assault and only investigate when a survivor's access to their education is completely denied to them because of the harassment or violence, potentially after the impact is so severe it limits the survivor's ability to ever complete their educational goals. May not include ability to investigate the most pervasive forms of sexual harassment such as sexist jokes or comments and crude harassment and insults, or unwanted sexual attention and advances or even sexual coercion.
2. **Off-campus assault and harassment:** §§ 106.30, 106.45(b)(3) - Schools would not be allowed to initiate an investigation or offer supportive measures to survivors who experienced sexual harassment, assault, dating/domestic violence, or stalking outside of the school setting or activities. This rule would only include events that occurred in the United State, removing current protections for students studying abroad.
3. **Standard of proof:** § 106.45(b)(4)(i) - Allows schools and in many cases may require schools to adopt higher standards of evidence. Most universities use a preponderance of the evidence standard, or "more likely than not" evidentiary standard, but under this proposed rule they can and may have to adopt the uncommonly used clear and convincing evidence standard, "*substantially* more likely than not" their claims are true.
4. **Cross-examination** § 106.45(b)(3)(vi)-(vii) - Re-traumatize students and survivors in the process by requiring cross-examination at live hearings by each parties' advisor of choice. Additionally, if any party or witness does not participate in cross-examination fully, all their statements, and potentially for survivors who do not participate in cross-examination even their initial Title IX complaint must be ignored and not taken into consideration by the decision maker(s).
5. **Required Mediation:** § 106.45(b)(6) - Allow mediation and other forms of informal resolutions that could potentially adversely impact survivors seeking justice and protection, and could bar survivors from later asking for a formal investigation and resolution.
6. **Deliberate indifference:** §§ 106.44(a), (b)(1) -(4) - Survivors cannot hold universities accountable unless they responded to a student's complaint of sexual harassment in a clearly unreasonable or deliberately indifferent way. Schools will not be found to be deliberately indifferent as long as they provide some sort of supportive measure(s) to the survivor.
7. **Supportive measures:** § 106.30 - Survivors will only be able to access supportive measures such as changes in housing, class schedules, extensions on assignments or extended time on tests if they formally report to the Title IX Coordinator. Schools that currently allow survivors to access interim measures through a campus advocacy program will no longer be able to do so.
8. **Unspecified timeframes:** § 106.45(b)(1)(v) - As opposed to the previous rule that universities must make every effort to complete Title IX investigations within 60 days, the new rule removes any timeframe requirement. This means schools will be able to extend timelines for investigations for as long as they would like as long as they document a reason why they are doing so.

9. **Presumption that survivors are lying:** § 106.45(b)(1)(iv) - As opposed to the current practice of conducting an unbiased and neutral investigation, schools will be required to presume that a respondent is not responsible, not guilty, and that survivors are lying, until the investigation has closed.
10. **Unequal grounds for appeal:** § 106.45(b)(5) -- While both the respondent and the survivor can file an appeal of the investigation finding the survivor will not be allowed to appeal the sanction imposed against the respondent, but the respondent will be able to do so.
11. **Mutual no-contact orders:** § 106.30- In 2001 the Supreme Court (Bays v. Bays, 779 So.2d 754) found that mutual or reciprocal protective or restraining orders should not be issued, except when each party files a request for the protective order and both are found to be primary aggressors and neither responding in self-defense. Requiring a mutual no contact order on college campuses would go against legal code in most states, has been proven to undermine safety of survivors and increases the risk of violence for survivors.

What's the 60-day comment period and what feedback can I submit?

The proposed regulations have not gone into effect yet, and there is a 60-day period when the public can provide feedback by submitting official comments. Students, families, campuses, organizations and the general community can submit comments regarding the rule until **January, 28th, 2019**. This is the final deadline to submit comments in order to provide feedback on how this new rule would potentially impact the community. The Department of Education has to respond to substantive and unique comments submitted by the public. See below for comment examples:

1. Start with an intro paragraph — are you a student, professional staff, community member? Why are you commenting on this topic?
2. Include the citation (ex. §§ 106.30, 106.45(b)(3)) for the proposed guidance/rule that you want to comment on.
3. Share how this proposed guidance/rule would impact your campus community. (I.e. The proposed rule would a) severely limit the definition of sexual harassment b) deny students their rights in not investigating off campus incidents c) require live hearing model that would re-traumatize students in the process, etc. If possible, include evidence or research to support your claim.
4. Summarize your points and end on an important note with a couple sentences.
5. When you're ready to submit, visit the NPRM/Title IX Regulations website [here](#), click the "Comment Now!" button and submit your comments.

For more comment examples and templates, visit the [Equal Rights Advocates' Comment Guide](#) for more information.

If I want to learn more about Title IX, the suggested Title IX guidance from the Department of Education or learn more about the impacts on the campus community, where can I go?

On-Campus

- Title IX Office, Title IX Coordinators
- Sexual Violence Prevention Offices
- Sexual Violence Survivor Advocacy Offices
- Respondent Services Coordinators

Off-Campus or Online

- Connect with other organizations nationally who are providing more information regarding the NPRM on Title IX including the [Equal Rights Advocates](#), [American Council on Education](#) and reviewing the [NASPA: Notice of Proposed Rulemaking on Title IX Information Sessions](#).