

## Title IX Compliance Legal Update

# Colleges Beware: Sweeping Changes to Title IX are on the Way

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### OVERVIEW

On August 14, 2020, expansive new rules regarding Title IX will take effect. Title IX prohibits discrimination on the basis of sex in federally-funded education institutions, and requires such universities to respond to reports of sexual violence. In a move that was long anticipated, the Trump Administration rolled back many Obama-era regulations, limiting institutional liability, narrowing the definition of sexual harassment, and dramatically expanding the protections afforded to those accused of misconduct.

Major changes include:

#### Discretionary Heightened Standard of Proof

Previously, institutions were required to utilize a “preponderance of the evidence” standard in Title IX cases. The new rules grant discretion to the schools to apply a higher “clear and convincing” evidence standard.

#### Enhanced Procedural Rights

The new rules require a quasi-judicial process giving the accused a right to a hearing, to counsel, and to cross examination of witnesses (including the victim). The new rules mandate that the decision maker be an impartial third party who is not the Title IX coordinator for the university or the investigator. Schools may also conduct the investigations and hearings remotely, an important accommodation in the age of COVID-19.

#### Expanded Coverage

The rules enhance an institution’s obligation to investigate complaints and clarify that universities are responsible for investigating incidents occurring off campus, such as at Greek letter organizations or academic conferences.

### NEED TO UPDATE TITLE IX PROTOCOLS

Most critically, the rules require all federally-funded education institutions to update their processes and procedures before **August 14, 2020**.

Schools must update their processes and procedures to include the following:

- Select one of two standards of evidence, the preponderance of the evidence standard or the clear and convincing evidence standard – and to apply the selected standard evenly to proceedings for all students and employees, including faculty

- Offer clear, accessible options for any person to report sexual harassment
- Devise a process that empowers survivors to control the way in which the school handles the allegation and investigation
- Requires the school to offer survivors supportive measures, such as class or dorm reassignments or no-contact orders
- Procedures for investigating off campus allegations if they are at school endorsed conferences, locations owned by Greek organizations endorsed by the school, or any other events that are part of the institution's programs
- Implementing new processes for upholding all students' right to written notice of allegations, a copy of all evidence gathered in the investigation, the right to an advisor, and the right to submit, cross-examine, and challenge evidence at a live hearing with an impartial decision maker
- Requires schools to offer an equal right of appeal for both parties to the results of a Title IX proceeding
- Schools must create protocols for using technology to conduct Title IX investigations and hearings remotely

Source: <https://www.ed.gov/news/press-releases/secretary-devos-takes-historic-action-strengthen-title-ix-protections-all-students> (last visited May 11, 2020).

This Title IX Compliance Legal Update is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact authors David M. Laigaie at 215.851.8386 or [dlaigaie@eckertseamans.com](mailto:dlaigaie@eckertseamans.com), Benjamin A. Beliles at 804.788.7743 or [bbeliles@eckertseamans.com](mailto:bbeliles@eckertseamans.com), or any other attorney at Eckert Seamans with whom you have been working.