



Déjà vu All Over Again: Vacating the 2024 Final Rule and Return of the 2020 Regulations

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TRUMP'S ORIGINAL 2020 TITLE IX RULE:

- During Trump's first term, sweeping Title IX regulations were enacted in May 2020.
- DOE's first formal revision of the Title IX regulations since the 1970s.
- The regulations significantly pulled back on informal guidance issued under prior administrations through Dear Colleague Letters.

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BIDEN'S 2024 OVERHAUL (NOW NULLIFIED)

- The Biden administration in April 2024 revised those regulations to recognize gender identity and sexual orientation under "sex discrimination," expanded the definition of harassment, and provided some flexibility for investigations.
- However, the 2024 rules were challenged and struck down by a federal judge in *Tennessee v. Cardona* on January 9, 2025.

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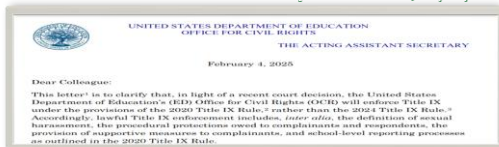
RETURN TO 2020 RULE UNDER TRUMP 2.0

- Acting swiftly after the court decision and his inauguration, Trump signed an executive order on January 20, 2025, mandating federal agencies to recognize only "two sexes" based on biology.
- The DOE issued a Dear Colleague Letter on January 31 instructing all federally funded educational institutions to revert immediately to the 2020 Title IX framework.

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"TODAY, THE...DEPARTMENT OF EDUCATION ...ADVISE[S] EDUCATORS AND ADMINISTRATORS THAT THE DEPARTMENT'S OFFICE FOR CIVIL RIGHTS WILL ENFORCE THE TRUMP ADMINISTRATION'S 2020 TITLE IX RULE."

— Dep. of Education, 01/25/2025



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CORE FEATURES OF THE 2020 RULE (NOW ENFORCED AGAIN)

- Easy Identification of Title IX Coordinator
- Public Resources
- Grievance Procedure
- Documentation Retention
- Definition of "Harassment"
- Dismissal Requirements
- Training for all Staff
- Discipline
- Due Process Emphasis
- Multiple Staff Roles
- Supportive Measures
- Formal Complaints

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GUIDELINES: WHERE AM I RESPONSIBLE?

- Title IX covers sexual harassment that happens in a school's "education program or activity."
- Defined as **broader** than "on campus" situations.
- Includes actions in a school program, digital program, or official student group's building.
- That includes locations, events, and circumstances where a school exercises **substantial control over the context of the alleged harassment and the person accused of committing sexual harassment.**
- **Includes** any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (fraternity house).

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3-PRONGED "SEXUAL HARASSMENT" DEFINITION

(1) **"Quid Pro Quo" Harassment:** Employee conditioning educational benefits on participation in sexual conduct, **OR...**

(2) **Hostile Environment:** Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity, OR...**

(3) "Sexual assault," "dating violence," "domestic violence," or "stalking" as those terms are defined under Federal laws called the *Clery Act* and the *Violence Against Women Act*.

34 CFR § 106.30(a)

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SCHOOLS AND "NOTICE?"

- Once a school has **actual knowledge** of sexual harassment or allegations of sexual harassment, the school **has to** respond and take action.
- A school has "**actual knowledge**" when the school has **notice** that a person **may** have been victimized by sexual harassment.
- Any person, whether the alleged victim or a parent, friend, or bystander, has the right to report sexual harassment to put the school on notice. Also, a school is on "notice" if any school personnel **witness** sexual harassment.

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Title IX reports may be made by:

1. Filling out Form
2. Verbal
3. Mail
4. Telephone
5. Email

Reports may be made at **any time**, including non-school hours

Schools must address a complaint of sexual harassment which would jeopardize complainant's equal access to an education program or activity. § 106.30(a).

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ACTUAL KNOWLEDGE BY PERSONNEL

- The Title IX Coordinator for the district or school.
- Other people within the school may have authority to institute corrective measures. This could vary from school to school but **always** includes the Title IX Coordinator.
- **In elementary and secondary schools, telling any school employee always puts the school on notice.** Includes cafeteria workers, sub. teachers, bus drivers, custodians, clerks.
- This means we must train **ALL** employees.

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WHAT KIND OF RESPONSE MUST THE SCHOOL PROVIDE?

The school **can't** be "deliberately indifferent." **Deliberate indifference = liability.** That also means that it can't be "clearly unreasonable" in light of the known circumstances. The clearly unreasonable standard **may** protect districts who "do not do enough, but were not clearly unreasonable"

The Title IX Coordinator **must** provide information to the individual:

The availability of supportive measures ;	The right to file a complaint , and	How to file a complaint and the process.
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WHAT PERSONNEL AND POLICIES DO SCHOOLS NEED TO HAVE?

- **Title IX Coordinator contact information;**
- **Non-Discrimination policy;**
- **Written grievance procedures; AND**
- Information about **how to file a formal complaint** regarding sexual harassment.

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FORMAL COMPLAINTS

- A **formal** complaint is an official document alleging sexual harassment.
- It's filed **and** signed by the student (or their parent or legal guardian), or in some cases, the Title IX Coordinator.
- In cases where an alleged victim doesn't file a formal complaint, a **Title IX Coordinator might initiate grievance procedures where discipline is appropriate**. Discipline for Title IX will be difficult without using procedure.

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WRITTEN GRIEVANCE PROCEDURES

Schools' written grievance procedures for dealing with sexual harassment **must** abide by the new regulations.

The grievance procedure **can't** discriminate on the basis of sex, and any additional provisions that a school adds **must apply equally to complainants as respondents**.

Note: Refers to alleged victims as "complainants" and alleged perpetrators as "respondents," **whether or not the grievance process has begun**.

Written grievance procedures **need** to include 10 other specific items. [See next 10 slides]

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REQ. 1: TREAT PARTIES "EQUITABLY"

- The school's grievance process **must** treat complainants and respondents "equitably" **by providing remedies to a complainant if a respondent is found responsible**, and by **following the prescribed grievance process** imposing discipline on a respondent.
- The remedies for a complainant must be designed to "**restore or preserve equal access**" to education programs or activities.
- Unlike supportive measures in place with or without a grievance process pending, **a complainant's remedies CAN be punitive or disciplinary against the respondent**.

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REQ. 2: OBJECTIVE EVALUATION OF EVIDENCE

- The school's grievance process **must** ensure an "objective" evaluation of **all** relevant evidence – including inculpatory and exculpatory evidence.
- Credibility determinations **can't be made on the basis of a person's status as a complainant, respondent, or witness**.

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REQ. 3: TRAINING AND NO CONFLICTS OF INTEREST

- The individuals involved in the process - like the Title IX Coordinator, investigators, decision-makers, or facilitators of informal, voluntary resolution efforts - **must NOT have any bias or conflict of interest**.
- These individuals must also be **trained**.
- **The materials used to train Title IX personnel:**
 - (1) can't rely on sex stereotypes,
 - (2) must promote impartial investigations and adjudications, and
 - (3) must be posted on each school's website (and if a school does not maintain a website, make them available for public inspection upon request).
- Must have copyright permission to publish.

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REQ. 4: PRESUMPTION OF INNOCENCE

- Under the school's grievance procedures, **the respondent must be presumed not responsible**, so that any finding of responsibility **only** comes at the conclusion of a grievance process.
- This implies that **before** a conclusion can be reached, therefore as part of the investigation, **there must be a hearing process.**

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REQ. 5: REASONABLY PROMPT TIME FRAMES

- The grievance process **must** include "reasonably prompt" time frames for resolving formal complaints of harassment.
- **Temporary delays** are permitted only for **good cause.**
- Good cause can include:
 - law enforcement activities,
 - the absence of a party or witness,
 - the absence of a party's advisor of choice
 - the need to provide language assistance or accommodation of disabilities.
- District policy and handbooks should include these reasons **along with "any other reason deemed good cause."**

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REQ. 6: DESCRIPTION OF OUTCOMES

- The grievance process **must** describe/list the range of remedies and disciplinary sanctions that could occur following a determination of responsibility. **This means "the range" should be listed in handbook and policy.**

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REQ. 7: STANDARD OF EVIDENCE

- The grievance process **must** state which standard of evidence the school will use to reach a determination regarding responsibility.
- Schools can choose between the **preponderance of the evidence standard and the clear and convincing evidence standard.**
 - Whichever standard the school chooses, it has to use that standard for **all formal complaints of sexual harassment**, whether the respondent is a student or employee.
- All sexual harassment proceedings must have the **same standard of evidence.**

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REQ. 8: RIGHT TO APPEAL

The grievance procedures have to contain the **right to appeal the result of a grievance process.** Will need appeal process in policy and handbook.

Schools must **offer an appeal** (details in later slide)

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REQ. 9: DESCRIPTION OF RANGE OF SUPPORTIVE MEASURES

- The school's grievance process must describe the **range of supportive measures** available to complainants and respondents. The range will need to go into board policy and handbooks.

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REQ. 9: SUPPORTIVE MEASURES

Supportive measures **may** include:

- (1) individualized services that are **non-punitive, non-disciplinary, and do not unreasonably burden the other party** yet are designed to **restore or preserve a person's equal access to education**;
- (2) placing students immediately in **separate classes** pending the results of the school's investigation;
- (3) notify the complainant of the options to **avoid contact** with the respondent and allow students to **change academic situations** as appropriate; **AND/OR**
- (4) **counseling**.

Must offer even if there is no investigation.

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REQ. 10: PRIVILEGES

- The school's grievance process **must** explain that no information protected by a legal privilege, such as the attorney-client privilege or the doctor-patient privilege, **can be used during an investigation** unless the person holding that privilege has waived it.
 - *Neither a party nor the school is allowed to seek, permit questions about, or allow evidence that is protected by a recognized privilege.*
- **Individuals can always opt to waive their own privileges.**

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WALKING THROUGH THE GRIEVANCE PROCESS

- This is the process **initiated** by a **formal** complaint, either by an individual or the Title IX Coordinator.

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EMERGENCY REMOVALS

A school **may** remove a respondent from the school's education programs or activities **on an emergency basis...**

...if the respondent poses an "immediate threat to anyone's physical health or safety."

If the respondent is a school employee, the final regulations **don't prevent a school from placing that employee on administrative leave** during the investigation.

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WRITTEN NOTICE TO THE PARTIES

When the school begins an investigation, it has to provide the parties with **written notice** of certain information. This could result in retaliation or intimidation by "respondent."

It has to give notice to the parties of the school's grievance process, which **must comply with the 10 requirements we listed before. *Miranda*** for harassment allegations.

It also has to include **whether there is an opportunity to engage in informal resolution.**

Schools don't have to offer informal resolution processes, but if they choose to, it's important that they are mentioned in this initial notice. **No informal resolution option for employee-student harassment.**

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DETAILS OF WRITTEN NOTICE

1. The actual allegations and facts that would constitute sexual harassment.
2. The presumption of innocence.
3. A statement that the parties are entitled to advisor of their choice.
4. A statement that the parties can request to inspect and review certain evidence.
5. Information regarding the code of conduct and false statements.

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MANDATORY DISMISSAL

- A school **must** dismiss a complaint:
 - (1) that does not describe conduct that meets the definition of sexual harassment;
 - (2) that alleges sexual harassment that did not occur in the school's education program or activity; and/or
 - (3) that alleges sexual harassment that did not occur in the United States at all. Schools trips out of U.S. excluded.
- Schools can still address these complaints under their code of conduct, even if the misconduct is not sexual harassment under Title IX.

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DISCRETIONARY DISMISSALS

- A school **may** dismiss a complaint:
 - (1) if the complainant notifies the Title IX Coordinator in writing that he/she wishes to withdraw the formal complaint or some of its allegations;
 - (2) if the respondent is no longer enrolled or employed by the school; **AND/OR**
 - (3) if specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations.
- Whenever a school dismisses a formal complaint, or any allegations in it, **the school has to promptly send written notice of the dismissal and the reasons to the parties.**
- Both parties have the right to appeal a school's dismissal decisions.

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GATHERING EVIDENCE

The school district:

1. must give **both** parties specific, equal rights and protections.
2. is **not** allowed to access a party's personal records if they are maintained by a physician, psychiatrist, psychologist, or other professional for the purpose of treatment to the party, **without consent.**
3. must provide an **equal** opportunity for the parties to present witnesses and evidence.
4. can't restrict the ability of either party to **discuss allegations under investigation, or to gather and present relevant evidence.**
5. has to provide the same opportunities to the parties to have others present during the grievance proceedings, including access to an **advisor of choice** for **any** meetings or hearings. Both complainant and respondent entitled to an "advisor" of their choice.

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GATHERING EVIDENCE

The school also:

1. has to provide **written notice** of the date, time, location, participants, and purpose of all hearings, interviews, or other meetings, with **sufficient time for the party to prepare.**
2. must also provide **equal opportunities** for the parties and their advisors to **inspect and review the evidence obtained by the school** as part of its investigation, if the information is directly related to the allegations raised in the formal complaint.
3. must give the parties a meaningful opportunity to respond to the evidence **after the school has provided it.**

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INVESTIGATIVE REPORTS

After gathering evidence, the school needs to prepare an **investigative report** on the allegations of the formal complaint.

1. A school has to give the parties **at least 10 days to respond to the evidence in writing.**
2. If a response is submitted, the school **must** consider that response **before** finalizing the investigative report.
3. That report must be circulated to the parties **at least another 10 days before** any determination of responsibility, or **10 days before a hearing,** if a hearing happens. This means before there can be a conclusion, **we wait at least 20 days.**

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HEARINGS AND CROSS-EXAMINATION

- For elementary and secondary schools, the school has the **option**, but never the obligation, to hold a hearing.
 - **MUST** still give the parties equal opportunity to submit relevant questions to each other before a determination.
- No party is **EVER** allowed to personally cross-examine.
 - Parties must be permitted an advisor of the party's choosing. If a school offers an advisor for a hearing, solely for the purpose of conducting cross-examination on that party's behalf.
- **An advisor chosen by the school does NOT need to be a lawyer.**

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Every person has the **right to choose to participate**, or not participate, in any part of a grievance process. No one may be forced, threatened, coerced, or discriminated against for choosing not to be part of the process.

If a party or witness chooses not to appear at the live hearing, or not to answer cross-examination questions, **the decision-maker excludes that person's statements** and evaluates any evidence that doesn't involve those statements.

The decision-maker must **never** make inferences about the determination regarding responsibility **based on the fact that a party or witness didn't come to** the hearing or submit to cross-examination.

A school may hold the entire live hearing virtually, **or** a school may allow some participants to appear virtually. **All meetings must be recorded!**

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DECISION-MAKING: OBJECTIVE AND UNBIASED

- The school's decision-maker needs to **objectively** evaluate the relevant evidence and reach conclusions about respondent responsibility.
- A school's decision-maker needs to use their judgment: cannot be the person who conducted the investigations **or** the Title IX Coordinator.
- Decision-makers must be free from conflicts of interest or bias for or against complainants or respondents, and must receive special training about how to be impartial and how to decide relevant evidence.
- The decision-maker will weigh the relevant evidence and decide whether it meets the school's **standard of evidence** for sexual harassment allegations. **They are the judge and jury!!**

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WRITTEN DECISIONS

Must issue a written decision that includes:

- Describes school's **policies** that were violated.
- Describes procedural **steps** taken by the school.
- A findings of **fact** section
- A section that draws **conclusions** and applies facts
- A statement and **rationale** for the determination.
- Any disciplinary **sanctions** that the school will impose on the respondent or whether the school will provide **remedies** to the complainant.
- A statement and **rationale** for any remedies.
- A statement of the recipient's **procedures**, that the parties have a **right to appeal** the determination of responsibility, and the **permissible bases** for appeal.

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AFTER THE DECISION

- The school must **send the written determination to the parties simultaneously, along with information about how to appeal the determination.**
- A school has discretion to set deadlines for when an appeal must be filed, bearing in mind the obligation to conclude the entire grievance process and bring resolution to the situation for both parties, within a **reasonably prompt time frame.**
- The **Title IX coordinator is responsible for carrying out any remedies rendered.**

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REMEDIES

Consider:

- training program for those involved in the complaint*
- comprehensive education program for the school community*
- counseling to the complainant and the respondent who engaged in prohibited conduct*
- increasing staff monitoring of areas where conduct has occurred*
- reaffirming the District's policy against discrimination/harassment.*

Respondents who are employees may be subject to a range of discipline from a written warning up to and including termination.

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APPEALS

A school has to offer **BOTH** parties an opportunity to appeal.

*****STAY TUNED!**

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INFORMAL RESOLUTION

1. Schools can offer informal resolution in most cases.
2. Informal resolution **only** if voluntary by each party.
3. A school can **never** force, threaten, or require informal resolution.
4. If informal resolution proceeds, the school **must** provide a facilitator who is unbiased, and who has received special training.
5. The school still needs to provide complainant and respondents with notice of the allegations, notice of their rights, information about whether an informal process is confidential, and about withdrawing from the process.

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MISCELLANEOUS

- No school or person is allowed to retaliate against anyone for exercising rights under Title IX.
- Any person retaliated against can file a complaint—the school **must** have procedures in place for the "**prompt and equitable**" resolution of such complaints.
- The school should keep the identities of parties and witnesses **confidential**, unless disclosure of someone's identity is required under other laws (e.g. FERPA) or is necessary in order to conduct the grievance process.
- It is retaliation to charge a person with code of conduct violation for the purpose of **discouraging the person from pursuing a sexual harassment report** or formal complaint or exercising any other Title IX rights.
- It may be prohibited retaliation if a code of conduct charge is for a violation unrelated to sexual harassment yet arises from the same facts as an allegation.

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CHECKLISTS FOR DISTRICTS

ADOPTED STANDARD FOR FINDING A VIOLATION:

"PREPONDERANCE OF THE EVIDENCE" **OR**

"CLEAR AND CONVINCING"

ADD/ENSURE **APPROPRIATE LANGUAGE IS IN BOARD POLICY AND HANDBOOKS:**

- Title IX Coordinator
- Campus Handbooks: Those Who Have Authority To Institute "Corrective Measures"
- The District's "Grievance" Process
- The District's Informal Resolution Process
- The District's Appeal Process
- Range of Remedies and Sanctions for Respondent
- Range of Supportive Measures For Complainant
- Sexual Harassment Complaint Form
- Form Letters

REQUIRED POSITIONS (SHOULD ALREADY HAVE):

- Title IX Coordinator
- Investigators and Decision-makers (**Independent, Unbiased**)
- Facilitators (**Independent, Unbiased**) (Trained in Informal Resolution)

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THANK YOU



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