

FACT SHEET: U.S. Department of Education's 2022 Proposed Amendments to its Title IX Regulations

Over the last 50 years, since Title IX of the Education Amendments of 1972 (Title IX) was signed into law, it has paved the way for tremendous strides in access to education, scholarships, athletics, and more for millions of students across the country. In spite of this historic progress, women and girls still face fundamental barriers to equal education opportunity. Rates of sexual harassment and assault in our nation's schools and colleges remain unacceptably high. Far too many women see their education derailed because of pregnancy discrimination. The promise of Title IX, an education free from sex discrimination, remains as vital now as it was when it was first signed into law.

Today, in celebration of the 50th anniversary of Title IX, the U.S. Department of Education released for public comment proposed changes to the regulation that help schools and colleges implement this vital civil rights legislation. The proposed amendments aim to ensure full protection under Title IX for students, teachers, and employees from all forms of sex discrimination, including sex-based harassment and sexual violence, in federally funded elementary schools, secondary schools, and postsecondary institutions.

These proposed regulations will advance Title IX's goal of ensuring that no person experiences sex discrimination in education, that all students receive appropriate support as needed to access equal educational opportunities, and that school procedures for investigating and resolving complaints of sex discrimination, including sex-based harassment and sexual violence, are fair to all involved.

The Department's proposed amendments will restore vital protections for students in our nation's schools which were eroded by controversial regulations implemented during the previous Administration. Those regulations weakened protections for survivors of sexual assault and diminished the promise of an education free from discrimination. The new regulations proposed by the Department will also provide clear rules to help schools meet their Title IX obligation to eliminate sex discrimination in their programs and activities. Through the proposed regulations, the Department reaffirms its core commitment to fundamental fairness for all parties; protecting freedom of speech and academic freedom; and respect for the autonomy and protections that complainants need and deserve when they come forward with a claim of sex discrimination.

The Department's proposed regulations will also strengthen protections for LGBTQI+ students by clarifying that Title IX's protections against discrimination based on sex apply to discrimination based on sexual orientation and gender identity.

In developing these proposed regulations, the Department consulted extensively with stakeholders, and received input from students, parents, educators, state government representatives, advocates, lawyers, researchers, and representatives from elementary, secondary, and postsecondary schools. The Department also held its first-ever nationwide virtual public hearing on Title IX in June 2021 and conducted a careful review of federal case law to support its comprehensive review of current Title IX policy and development of the proposed regulations.

The proposed regulations would:

Clearly protect students and employees from all forms of sex discrimination

The Department's proposed regulations clarify that Title IX's prohibition of discrimination based on sex includes protections against discrimination based on sex stereotypes and pregnancy. The Department is

also clarifying that Title IX's protections against discrimination based on sex apply to sexual orientation and gender identity. This clarification is necessary to fulfill Title IX's nondiscrimination mandate.

Provide full protection from sex-based harassment.

The proposed regulations will restore vital protections for students against all forms of sex-based harassment. Under the previous Administration's regulations, some forms of sex-based harassment were not considered to be a violation of Title IX, denying equal educational opportunity. The proposed regulations would cover all forms of sex-based harassment, including unwelcome sex-based conduct that creates a hostile environment by denying or limiting a person's ability to participate in or benefit from a school's education program or activity.

Protect the right of parents and guardians to support their elementary and secondary school children.

The proposed regulations would strengthen clear protection for parents, guardians, and other authorized legal representatives of students to act on behalf of a student, including by seeking assistance under Title IX and participating in any grievance procedures.

Protect students and employees who are pregnant or have pregnancy-related conditions.

The proposed regulations would update existing protections for students, applicants, and employees against discrimination because of pregnancy or related conditions. The proposed regulations would strengthen requirements that schools provide reasonable modifications for pregnant students, reasonable break time for pregnant employees, and lactation space.

Require schools to take prompt and effective action to end any sex discrimination in their education programs or activities – and to prevent its recurrence and remedy its effects.

The proposed regulations would promote accountability and fulfill Title IX's nondiscrimination mandate by requiring schools to act promptly and effectively in response to information and complaints about sex discrimination in their education programs or activities. And they would require that schools train employees to notify the Title IX coordinator and respond to allegations of sex-based harassment in their education programs or activities.

Require schools to respond promptly to all complaints of sex discrimination with a fair and reliable process that includes trained, unbiased decisionmakers to evaluate all permissible evidence.

The proposed regulations would establish clear requirements for schools to conduct a reliable and impartial investigation of all sex discrimination complaints, as Title IX requires. The current regulations' requirements cover *only* formal complaints of sexual harassment.

The proposed regulations would keep as much of the current regulations as possible to ensure consistency for schools *and* would update procedures to fill gaps and work more effectively in protecting against sex discrimination in the nation's K-12 schools and postsecondary institutions.

The Department's proposed regulations would include the following requirements:

- All schools must treat complainants and respondents equitably.
- Schools have the option to offer informal resolution for resolving sex discrimination complaints.

- Title IX Coordinators, investigators, decisionmakers, and facilitators of an informal resolution process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- A school's grievance procedures must give the parties an equal opportunity to present relevant evidence and respond to the relevant evidence of other parties.
- The school's decisionmakers must objectively evaluate each party's evidence.
- The proposed regulations would not require a live hearing for evaluating evidence, meaning that if a school determines that its fair and reliable process will be best accomplished with a single-investigator model, it can use that model.
- A school must have a process for a decisionmaker to assess the credibility of parties and witnesses through live questions by the decisionmaker. The proposed regulations would not require cross-examination by the parties for this purpose but would permit a postsecondary institution to use cross-examination if it so chooses or is required to by law.
- In evaluating the parties' evidence, a school must use the preponderance-of-the-evidence standard of proof unless the school uses the clear-and-convincing-evidence standard in all other comparable proceedings, including other discrimination complaints, in which case the school may use that standard in determining whether sex discrimination occurred.
- A school must not impose disciplinary sanctions under Title IX on any person unless it determines that sex discrimination has occurred.

Protect LGBTQI+ students from discrimination based on sexual orientation, gender identity, and sex characteristics.

The proposed regulations would clarify that Title IX's prohibition on discrimination based on sex applies to discrimination based on sexual orientation and gender identity. They would make clear that preventing someone from participating in school programs and activities consistent with their gender identity would cause harm in violation of Title IX, except in some limited areas set out in the statute or regulations. By providing this protection, the proposed provisions would carry out Title IX's nondiscrimination mandate and help to ensure access to education free from sex discrimination for LGBTQI+ students and others.

The Department plans to issue a separate notice of proposed rulemaking to address whether and how the Department should amend the Title IX regulations to address students' eligibility to participate on a particular male or female athletics team.

Require schools to provide supportive measures to students and employees affected by conduct that may constitute sex discrimination, including students who have brought complaints or been accused of sex-based harassment.

Under the proposed regulations, schools would be required to offer supportive measures, as appropriate, to restore or preserve a party's access to the school's education program or activity. The current regulations require this support only when sexual harassment, rather than any form of sex discrimination, might have occurred.

Clarify and confirm protection from retaliation for students, employees, and others who exercise their Title IX rights.

Retaliation against someone who provides information about alleged sex discrimination or who participates in a school's Title IX process can interfere with protections guaranteed by Title IX. If

students or others do not have clear protection against such retaliation, they may be unwilling to come forward with information or a complaint of sex discrimination, leaving Title IX protections unfulfilled.

The proposed regulations would make clear that schools must not intimidate, threaten, coerce, or discriminate against someone because they provided information about or made a complaint of sex discrimination or because they participated in the school's Title IX process – and that schools must protect students from retaliation by other students.

Improve the adaptability of the regulations' grievance procedure requirements so that all recipients can implement Title IX's promise of nondiscrimination fully and fairly in their educational environments.

To be effective in implementing Title IX, a school's grievance procedures for sex discrimination complaints must adapt to the age, maturity, needs, and level of independence of students in various educational settings, and the particular contexts of employees and third parties.

Based on this reality, the Department's proposed regulations would include a framework that accounts for these differences, including requirements that apply in all settings and specialized requirements that are tailored to the unique situation of sex-based harassment complaints involving postsecondary students.

This framework would ensure that all federally funded schools and postsecondary institutions can provide for the prompt and equitable resolution of sex discrimination complaints in their respective settings.

Ensure that schools share their nondiscrimination policies with all students, employees, and other participants in their education programs or activities

The proposed regulations also would require all schools that receive federal funding to clearly and effectively communicate their nondiscrimination policies to all students, employees, and other participants in their education programs or activities.

The Department's proposed Title IX regulations will be open for public comment for 60 days from the date of publication in the *Federal Register*.

Additional information on the proposed rule is available [here](#). The unofficial version of the proposed rule is available [here](#).