

What is Title IX?

Title IX of the Education Amendments Act of 1972 is a federal law that **prohibits sex discrimination** in any educational institution that receives federal funding. In 1994, the Education Department's Office for Civil Rights (OCR) applied the law to sexual assault on campus. This requires universities to investigate and adjudicate sexual assault cases. However, this guidance did little to reduce rates of assault on campus.

A 2009 study of ten years of sexual assault complaints filed under Title IX revealed that students found responsible for sexual assault faced **almost no consequences**. Only 10-25% of those found guilty were permanently expelled. Almost all disciplinary actions were minor sanctions like counseling, community service, probation – or no action at all. **Sexual assault survivors faced the harshest punishment** – seeing their rapist on campus every day. Title IX was failing.

“What frustrates me at my school is that we've had people expelled for cheating, but nobody has ever been expelled for rape.”

What did the “Dear Colleague Letter” do?

In 2011, the Obama administration issued a “Dear Colleague Letter” to reinforce the requirement that schools investigate sexual assault. The Letter also required schools to use a “preponderance of evidence” standard in deciding sexual assault cases.

Three different criteria are used in deciding legal cases:

- The **‘preponderance of evidence’** standard sets the burden of proof as “more likely than not” something occurred. This standard is used in civil cases.
- The **‘clear and convincing evidence’** standard sets the burden of proof as “substantially more likely than not” something occurred. This is a higher threshold than the ‘preponderance’ standard and is used in some civil cases.
- The **‘beyond a reasonable doubt’** standard is the highest standard of proof and is used in criminal proceedings. The burden of proof requires that no other logical explanation can be derived from the facts except that the defendant committed the crime.

The Office of Civil Rights (OCR) requires the ‘preponderance of evidence’ standard in resolving all discrimination cases it enforces, including Title IX. Some schools were using the ‘clear and convincing’ standard, which made it more difficult to find someone guilty. The Dear Colleague Letter reiterated that the ‘preponderance’ standard be used in sexual assault cases, like all other discrimination cases.

The Letter sets out rights and protections for **accused** students, including:

- due process
- equal opportunity to present witnesses and evidence
- timely access to information used in the hearing
- an impartial investigation and hearing process
- an appeals process

The Letter reinforced due process for the accused, laid out rules that prompted sexual assault survivors to come forward, and encouraged universities to prevent sexual assault on campus.

What is happening now?

In September, the federal Department of Education announced that it is **rescinding the guidelines** from the Obama administration and will establish new Title IX requirements. This consists of publishing a proposal in the Federal Register and seeking and considering public comments, which will take **up to 18 months**.

The Department issued interim guidelines that allow schools to decide how to handle sexual assault cases until the new rules are established. **Schools do not need to follow the newly-proposed policies.**

The interim guidelines make three major changes **THAT WE DO NOT SUPPORT:**

- Schools can decide sexual assault cases using **EITHER** a ‘preponderance of evidence’ standard **OR** a ‘clear and convincing evidence’ standard. **THIS WILL MAKE IT HARDER TO HOLD PERPETRATORS ACCOUNTABLE.**
- Colleges can **facilitate mediation** in sexual assault cases. **MEDIATION IS NOT APPROPRIATE** because sexual assault survivors should not have to “work through” their assault with the perpetrator.
- Campuses can choose to offer an appeals process **only to accused students**, not to both parties. **THIS GIVES THE ACCUSED AN UNFAIR ADVANTAGE.**



Take Action!

For now, it is up to schools to decide how to handle sexual assault cases. **Student groups and outside pressure will have an immense impact on how schools respond to the new guidelines.**

Call your Title IX coordinator. Tell him or her to follow the previous guidelines. Coordinators can be found by searching your school at <https://ope.ed.gov/campusafety/#/institution/search>.