

New Title IX Regulations: Key Changes

Office of Title IX Compliance and Training
August 3 & 6, 2020

ST MARY'S
COLLEGE of MARYLAND
The National Public Honors College



Let's take a moment:

These are difficult
times, and this is a
difficult topic.

Our Commitment and Our Goal

In the midst of changing laws and regulations, The St. Mary's Way remains firm.

We are committed to ensuring that all of our Title IX actions are based in respect, sensitivity, and dignity for all of our students, faculty, and staff members.

Background

Trump-Era Title IX Developments

Sept. 2017	<ul style="list-style-type: none">● Secretary of Education Betsy DeVos addresses Title IX● Trump administration releases new interim Title IX guidance, withdrawing most Obama-era guidance
Nov. 2018 - Jan. 2019	<ul style="list-style-type: none">● Trump administration releases new proposed Title IX regulations● Notice and comment period - over 124,000 comments received
May 2020	<ul style="list-style-type: none">● Trump administration releases final Title IX regulations
Aug. 2020	<ul style="list-style-type: none">● New Title IX regulations are implemented

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Nov. 2018 - Jan. 2019	<ul style="list-style-type: none">• Trump administration releases new proposed Title IX regulations• Notice and comment period - over 124,000 comments received <p><i>We host meetings and share information with the campus community</i></p>
May 2020	<ul style="list-style-type: none">• Trump administration releases final Title IX regulations <p><i>We share a message with the campus community and host two open meetings</i></p>
Aug. 2020	<ul style="list-style-type: none">• New Title IX regulations are implemented <p><i>We host meetings in early August and will continue sharing information</i></p>

Key Changes

Five Big Questions

What qualifies as sexual harassment prohibited by Title IX?

When must the College respond to sexual harassment?

Who must report sexual harassment incidents to the Title IX Office?

How are formal Title IX investigations resolved?

On which grounds may a party appeal the outcome of a formal Title IX investigation?

What Qualifies as Sexual Harassment Prohibited by Title IX?

Current Policy

Policy covers ***sexual misconduct***, including sexual and gender-based discrimination, sexual and gender-based harassment, sexual violence, stalking, and relationship violence.

New Policy

Policy covers (1) ***sexual harassment that falls under Title IX*** and (2) ***other forms of sexual harassment***, such as sexual exploitation.

What Qualifies as Sexual Harassment Prohibited by Title IX?

Current Policy

Sexual harassment is: Any unwelcome sexual advance, unwelcome request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when:

1. **Submission to or rejection of such conduct** is made, either explicitly or implicitly, **a term or condition** of an individual's employment, evaluation of academic work, or participation in any aspect of a College program or activity;
2. **Submission to or rejection of such conduct** by an individual is used as **the basis** for academic, employment, or activity or program participation-related **decisions** affecting the individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently **serious, pervasive or persistent** as to create an intimidating, **hostile**, humiliating, demeaning, or sexually offensive working, academic, residential, or social **environment** under both a subjective and objective standard.

What Qualifies as Sexual Harassment Prohibited by Title IX?

New Policy

Sexual harassment includes three types of sexual misconduct:

1. ***Quid pro quo harassment***: A school employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct
2. 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
3. ***Sexual assault, dating violence, domestic violence, or stalking*** (as defined by the Clery Act and the Violence Against Women Act)

A Closer Look at Sexual Harassment Language

New Title IX Regulation Language

“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”

Based on a 1999 Supreme Court decision, *Davis vs. Monroe County Bd. of Ed.*, articulating the standard for a hostile environment

Current Policy Language

“Sufficiently **serious, pervasive or persistent** as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and objective standard”

Based on Title VII workplace or public accommodations standard

According to DOE, *Davis* applies because of differing First Amendment/academic freedom concerns in education and the workplace

What Qualifies as Sexual Harassment Prohibited by Title IX?

Key Takeaway

The new regulations narrow the definition of sexual harassment.

However, our policy will still prohibit other forms of sexual misconduct, and we can still take action to address conduct that may not meet the new definitions.



When Must the College Respond to Sexual Harassment?

Current Policy

Applies to...

Conduct occurring on SMCM property or at off-campus SMCM events or programs

Any incident between two members of the SMCM community

Off-campus conduct that is likely to have a substantial adverse effect, or pose a threat of danger, to the SMCM community

New Policy

The College must respond to sexual harassment when:

1. The school has **actual knowledge** of sexual harassment
2. That occurred within the school's **education program or activity**
3. Against a person **in the United States**.

When Must the College Respond to Sexual Harassment?

Key Takeaway

The new regulations narrow schools' jurisdiction to address sexual harassment under Title IX.

However, we will apply the same policy and procedures to address both:

- Sexual harassment under Title IX and
- Sexual harassment that occurs outside the scope of Title IX (off campus, study abroad, etc).



Who Must Report Sexual Harassment Incidents to the Title IX Office?

Current Policy

Responsible Employees: “All faculty, coaches, administrators, Resident Assistants/Residence Hall Coordinators, and other student employees/volunteers with a significant responsibility for student welfare.”

New Policy

Officials with Authority: “Those employees who, along with the Title IX Coordinator, have the authority to institute corrective measures on behalf of the institution.”

Who Must Report Sexual Harassment Incidents to the Title IX Office?

Current **Responsible Employees** include:

- Title IX Office
- Division of Student Affairs
- Human Resources
- Public Safety
- All Coaches
- Faculty
- RAs, RHCs, OLs

In addition to **Officials with Authority**, responsible employees should still report sexual harassment concerns to the Title IX Office.

Who Must Report Sexual Harassment Incidents to the Title IX Office?



Key Takeaway

Under the new regulations, the College must respond to sexual harassment if employees known as “Officials with Authority” are aware of the issue.

In addition to this new definition, faculty, staff, and student employees like RAs and RHCs should still report sexual harassment concerns to the Title IX Office.

How are Formal Title IX Investigations Resolved?

Current Policy

Civil rights investigator model: two investigators conduct an investigation designed to provide a fair, impartial, and reliable gathering of the facts.

Parties review and respond to investigative materials before the Investigators determine the outcome and sanction (if appropriate). Both parties may appeal.

New Policy

Following an investigation, the new regulations require a ***live hearing***, including ***cross-examination by the parties' advisers***. Both parties may appeal.

How are Formal Title IX Investigations Resolved?

New Hearing Requirements

- After the investigation concludes, parties have 10 days to review all evidence before the investigative report is finalized. Parties also have 10 days to review the final investigative report before the hearing.
- Hearings must be live but not necessarily in the same space.
- Expert witnesses must be allowed.
- Cross-examination must be done directly, orally, in real time, by the adviser. The hearing officer will determine the relevancy of cross-examination questions.
- All complainants are protected from inappropriately being asked about prior sexual history.
- If a party will not sit for cross-examination, their statements will not be considered.
- The College will continue to use the preponderance of the evidence standard.

How are Formal Title IX Investigations Resolved?

Key Takeaway

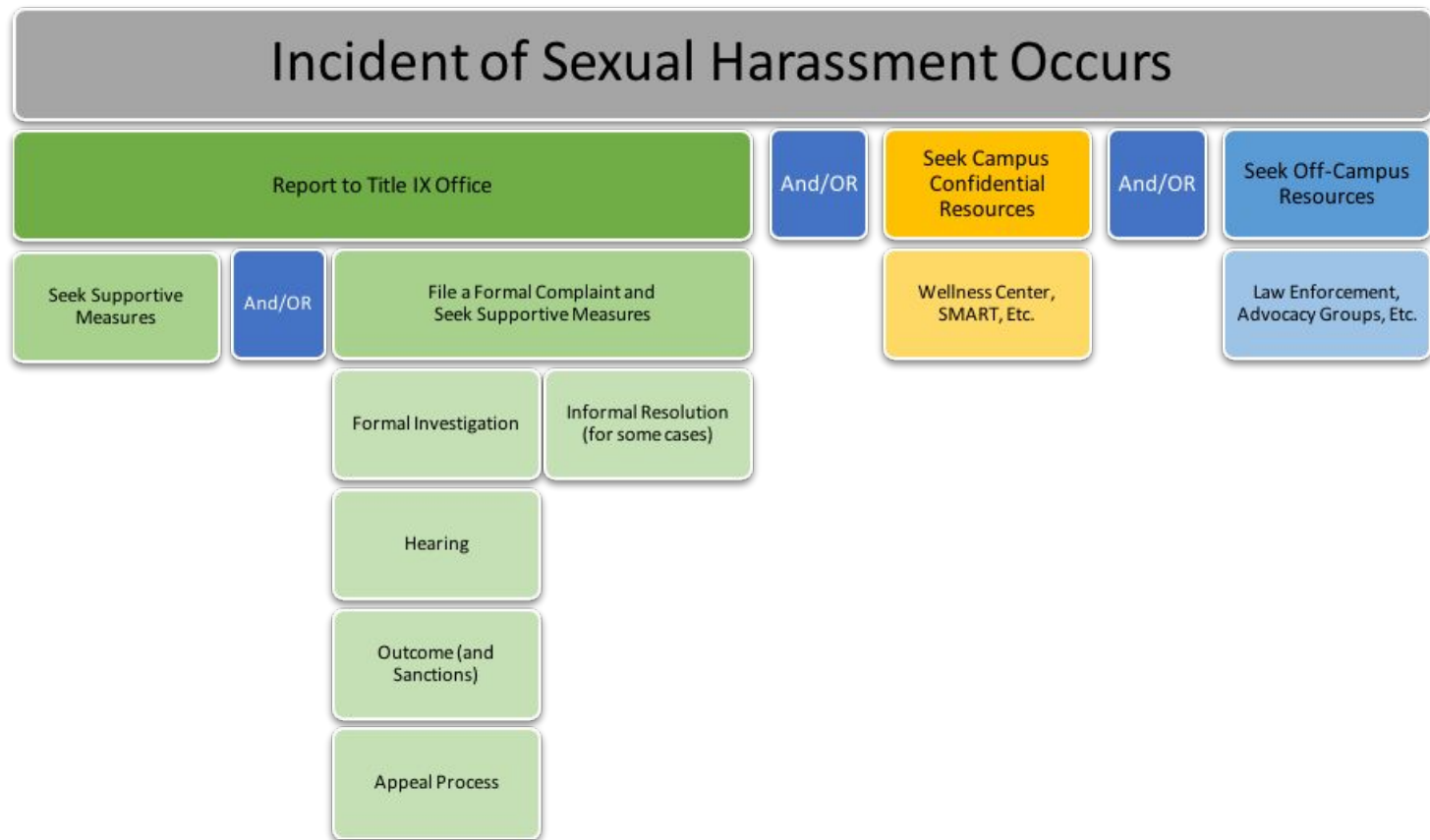
All colleges are required to hold live hearings to adjudicate formal Title IX investigations.

Using best practices in the field, we will work to make sure that this process is done in a fair, sensitive, respectful, and trauma-informed way.

Supportive measures are always available, and informal resolution processes may be available, even if someone doesn't want to pursue a formal investigation.



Options and Pathways



On Which Grounds may a Party Appeal the Outcome of a Formal Title IX Investigation?

Current Policy

1. Specified ***deviations from the prescribed procedures*** that resulted in significant prejudice to the appealing party
2. ***New or significant information*** that could not reasonably be made available at the time of the original investigation
3. The ***sanction*** imposed was not appropriate for the policy violation

New Policy

1. ***Procedural irregularity*** that affected the outcome
2. ***New evidence*** that was not reasonably available at the time the determination was made, that could affect the outcome
3. Title IX personnel had a ***conflict of interest or bias*** for/against complainants or respondents generally or the specific party, that affected the outcome

On Which Grounds may a Party Appeal the Outcome of a Formal Title IX Investigation?



Key Takeaway

The grounds for appeal are mostly the same with two exceptions:

- Parties can't appeal the sanction
- Parties can appeal based on concerns that Title IX personnel had a bias or conflict of interest that affected the outcome

Five Big Questions and Key Takeaways

<i>What qualifies as sexual harassment prohibited by Title IX?</i>	The new regulations narrow the definition of sexual harassment. However, our policy will still prohibit other forms of sexual misconduct, and we can still take action to address conduct that may not meet the new definitions.
<i>When must the College respond to sexual harassment?</i>	The new regulations narrow schools' jurisdiction to address sexual harassment under Title IX. However, we will apply the same policy and procedures to address both sexual harassment under Title IX, and sexual harassment that occurs outside the scope of Title IX (off campus, study abroad, etc).
<i>Who must report sexual harassment incidents to the Title IX Office?</i>	Under the new regulations, the College must respond to sexual harassment if employees known as "Officials with Authority" are aware of the issue. In addition to this new definition, faculty, staff, and student employees like RAs and RHCs should still report sexual harassment concerns to the Title IX Office.

Five Big Questions and Key Takeaways

How are formal Title IX investigations resolved?

All colleges are required to hold live hearings to adjudicate formal Title IX investigations. Using best practices in the field, we will work to make sure that this process is done in a fair, sensitive, respectful, and trauma-informed way. Supportive measures are always available, and informal resolution processes may be available, even if someone doesn't want to pursue a formal investigation.

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An Ongoing Process

The new regulations go into effect on August 14, 2020.

This year, we will implement and learn from the new policy.

We will continue to make community-informed changes to meet the needs of our campus as much as we can.

We'll remain in dialogue about these changes as the academic year unfolds.



What Happens Next?

Work with College counsel to finalize policy for implementation on August 14

Update campus resources and publications

Train new and returning students, faculty and staff beginning this month

Train campus Title IX personnel beginning this week

Continue partnering with colleagues and professional groups to identify best practices for the new regulations

Get feedback and identify lessons learned under this first year of the new policy

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Questions or
comments?

Thank You!

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