

**Summary of New Major Title IX Regulations vs. Prior Regulations:  
THEN & NOW QUIZ**

*Please circle “THEN” or “NOW” in relation to your guess of whether the statement is a new Title IX regulation or old Title IX regulation.*

<p><b>Schools’ Scope of Responsibility</b></p>	<p>The focus is on schools’ responsibility to address <b>particular cases</b> of serious sexual misconduct.</p> <p><b>THEN OR NOW</b></p>	<p>Schools have <b>broad responsibility</b> to change the culture, to end any harassment, and to address the effects of rape culture on the <b>entire student population</b>.</p> <p><b>THEN OR NOW</b></p>
<p><b>K-12 in Relation to Title IX</b></p>	<p>Judges and administrators acknowledge important differences between K-12 students and those in postsecondary institutions. <b>Sexual harassment in K-12 schools, however, is not directly addressed.</b></p> <p><b>THEN OR NOW</b></p>	<p>The rules go far beyond the court’s bare-bones framework to explain what constitutes harassment, what schools must do to identify and adjudicate cases of misconduct, and the remedies they must provide to victims of such misconduct. It is the <b>first time the issue of sexual harassment in K-12 schools is addressed directly.</b></p> <p><b>THEN OR NOW</b></p>
<p><b>Definition of Sexual Harassment Under Title IX</b></p>	<p>The Office of Civil Rights (OCR) advises that sexual harassment of a student by a student creates a hostile environment if:</p> <ul style="list-style-type: none"> <li>• the harassment is <b>severe, pervasive, or persistent</b>; and</li> <li>• interferes with or limits a student’s ability to participate in or benefit from school services, activities, or opportunities.</li> </ul>	<p>The definition of sexual harassment adopts a <b>higher standard</b>. Prohibited “sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:</p> <ol style="list-style-type: none"> <li>1. An employee conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct (i.e., quid pro quo);</li> </ol>

		<p>2. Unwelcome conduct determined by a reasonable person to be <b>so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity</b> (i.e., hostile environment); or</p> <p>3. Sexual assault (as defined by Clery Act), or “dating violence,” “domestic violence,” and “stalking” (as defined by Violence Against Women Act (VAWA)).</p>
	<b>THEN OR NOW</b>	<b>THEN OR NOW</b>
<b>“Program or Activity”</b>	<p>Schools must respond when harassment occurs “in the school’s education <b>program or activity.</b>” For K-12 purposes, the definition of “program or activity” is “<b>locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs</b>” (e.g. campus, field trips, athletic events, conferences, etc.).</p>	<p>Schools must “process all complaints of sexual violence, <b>regardless of where the conduct occurred,</b> to determine whether the conduct ... had continuing effects on campus.”</p>
	<b>THEN OR NOW</b>	<b>THEN OR NOW</b>
<b>Designating a Title IX Coordinator</b>	<p>The regulations require that recipients not only <b>designate but also “authorize”</b> an individual to coordinate the recipient’s compliance efforts.</p>	<p>Title IX regulations require recipients to <b>designate an employee</b> to coordinate the recipient’s efforts to implement the law.</p>
	<b>THEN OR NOW</b>	<b>THEN OR NOW</b>

<p><b>Who Can Report?</b></p>	<p>Sexual harassment is to be reported by a <b>“responsible employee.”</b> A responsible employee includes any employee: who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty.</p> <p><b>THEN OR NOW</b></p>	<p>The regulations protect K-12 students by requiring elementary and secondary schools to respond promptly when <b>any district employee has notice of sexual harassment</b> (teachers, guidance counselors, bus drivers, etc.).</p> <p><b>THEN OR NOW</b></p>
<p><b>Actual Knowledge</b></p>	<p>Schools will be held responsible for addressing a complaint if they have "actual knowledge" that an offense occurred, a higher bar than under the old guidance. “Actual knowledge” means a mandated reported has notice of “sexual harassment <i>or</i> allegations of sexual harassment.” In the K-12 context, all employees are mandatory reporters. A school cannot be liable for failing to respond to known allegations of harassment unless it acts with “deliberate indifference,” defined as actions that are “clearly unreasonable in light of the known circumstances.”</p> <p><b>THEN OR NOW</b></p>	<p>Schools are held responsible for addressing a complaint and are required to intervene if they <b>“reasonably”</b> should have known about a violation.</p> <p><b>THEN OR NOW</b></p>

<p><b>Standard of Evidence</b></p>	<p>Schools are <b>required to select <u>one of two standards of evidence</u></b>, the preponderance of the evidence standard or the clear and convincing evidence standard—and to apply the selected standard <b>evenly</b> to proceedings for all students and employees, including faculty.</p> <p><b>THEN OR NOW</b></p>	<p>Schools must use a <b>preponderance of the evidence standard</b> (i.e., it is more likely than not that sexual harassment or violence occurred).</p> <p><b>THEN OR NOW</b></p>
<p><b>Investigative Requirements</b></p>	<p><b>There are no requirements</b> on schools to <b>share exculpatory evidence</b> with the accused student, nor to document any exculpatory evidence that a Title IX investigator might have uncovered.</p> <p><b>THEN OR NOW</b></p>	<p>After a student reports an assault or a harassment covered by Title IX, the school must tell the students involved and their parents <b>in writing</b> about the allegations and <b>the entirety</b> of the evidence that is gathered.</p> <p><b>THEN OR NOW</b></p>
<p><b>Hearings</b></p>	<p>There is a requirement that colleges and universities hold live hearings with cross-examination in sexual harassment disciplinary proceedings. OCR recognizes the importance of cross-examination in determining the truth and requires schools that use hearings to permit some form of questioning of the accuser, but does not require allowing a lawyer or an advocate for the accused to conduct that questioning. <b>The requirement of live hearings does <u>not</u> apply to elementary and secondary schools</b></p> <p><b>THEN OR NOW</b></p>	<p>Schools are strongly discouraged from permitting an accused student from directly cross-examining his accuser. Since most schools <i>also</i> prohibit the lawyer for an accused student from questioning the witness, this effectively means that <b>OCR discourages all cross-examination.</b></p> <p><b>THEN OR NOW</b></p>
<p><b>“First Response” Protocol</b></p>	<p>The regulations establish a “first response” protocol on the part of the Title IX coordinators. Specifically, if anyone reports</p>	<p>“First response” protocol is <b>not</b> necessary.</p>

	<p>sexual harassment through any method, the Title IX coordinator or designee must:</p> <ul style="list-style-type: none"> <li>• promptly contact the complainant to discuss the availability of supportive measures;</li> <li>• consider the complainant’s wishes with respect to supportive measures;</li> <li>• inform the complainant of availability of supportive measures with or without filing a complaint; and</li> <li>• explain to the complainant the process for filing a formal complaint.</li> </ul> <p><b>THEN OR NOW</b></p>	<p><b>THEN OR NOW</b></p>
<p><b>Training</b></p>	<p>Title IX requires schools to train certain personnel (Title IX coordinators, investigators, decision-makers, any person who facilitates an information resolution process) on the law.</p> <p><b>THEN OR NOW</b></p>	<p><b>Staff must participate in training</b> including information on the regulation’s definition of sexual harassment and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.</p> <p><b>THEN OR NOW</b></p>