

SNIFFEN & SPELLMAN, P.A.

EDUCATION LAW SPECIAL ALERT

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Department of Education Release Historical New Regulations

After careful research, deliberation, and public input, the Department of Education has released new Title IX regulations that include a specific definition for sexual harassment, require institutions to provide support for survivors, and provide additional due process. The goal of the new regulations are to hold schools accountable for failure to respond in an equitable and prompt manner to allegations of sexual misconduct and to ensure a more fair and reliable adjudication process for all students involved.

According to the Department, the following are key changes in the new regulations:

1. Defines sexual harassment to include sexual assault, dating violence, domestic violence, and stalking, as unlawful discrimination on the basis of sex
2. Provides a consistent, legally sound framework on which survivors, the accused, and schools can rely
3. Requires schools to offer clear, accessible options for any person to report sexual harassment
4. Empowers survivors to make decisions about how a school responds to incidents of sexual harassment
5. Requires the school to offer survivors supportive measures, such as class or dorm reassignments or no-contact orders
6. Protects K-12 students by requiring elementary and secondary schools to respond promptly when *any* school employee has notice of sexual harassment
7. Holds colleges responsible for off-campus sexual harassment at houses owned or under the control of school-sanctioned fraternities and sororities
8. Restores fairness on college and university campuses by upholding all students' right to written notice of allegations, the right to an advisor, and the right to submit, cross-examine, and challenge evidence at a live hearing
9. Shields survivors from having to come face-to-face with the accused during a hearing and from answering questions posed personally by the accused
10. Requires schools to select one of two standards of evidence, the preponderance of the evidence standard or the clear and convincing evidence standard – and to apply the selected standard evenly to proceedings for all students and employees, including faculty
11. Provides "rape shield" protections and ensures survivors are not required to divulge any medical, psychological, or similar privileged records
12. Requires schools to offer an equal right of appeal for both parties to a Title IX proceeding
13. Gives schools flexibility to use technology to conduct Title IX investigations and hearings remotely

14. Protects students and faculty by prohibiting schools from using Title IX in a manner that deprives students and faculty of rights guaranteed by the First Amendment

Unlike previous letters on this topic, the new regulations carry the full force of law. Our attorneys are currently reviewing the new regulations.

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