

From:

The Association for the Treatment and Prevention of Sexual Abuse
4900 SW Griffith Drive
Suite 274
Beaverton, OR 97005-4732



To:

Title IX Comment Coordinator
U.S. Department of Education
400 Maryland Avenue SW,
Room 6E310
Washington, D.C. 20202

Subject: Written Comment: Title IX Public Hearing Comments on 2022 Title IX Rule Changes

INTRODUCTION

The Association for the Prevention and Treatment of Sexual Abuse (ATSA) appreciates the opportunity to comment on the proposed changes to the Title IX rules governing the handling of sexual harassment in educational institutions. ATSA is a multi-disciplinary professional organization that comprises over 3,000 members dedicated to making society safer by preventing sexual abuse. We support sound research, effective practice, informed public policy, and collaborative community approaches that lead to comprehensive prevention strategies and promote the effective assessment, treatment, and management of individuals who have sexually abused or are at risk to abuse. It is within this framework that we make the following comments.

DEFINITION OF SEXUAL HARASSMENT

ATSA supports the broader and more comprehensive definition of “sexual harassment” that is inclusive of the range of behaviors that can interfere with a person’s equal access to an educational program or activity. In particular, we wanted to note our support for the definition of “hostile environment harassment” as sufficiently “severe OR pervasive.” This return to the Department’s standards applied from 1997-2020 is a welcome and important change. This expanded definition opens the door for the person harmed and, potentially, the person who caused the harm to access counseling or other services they may need.

Furthermore, by allowing for a larger range of behaviors to be reported, educational institutions will then be notified and become aware of all types of situations that impact students. Even when the alleged conduct did not rise to a level that merited a response under Title IX, knowledge of the problematic behavior offers institutions an opportunity to intervene early and offer the necessary support and services to all involved persons. Promoting early intervention not only supports victims and future student safety, it also provides the

Association for the Treatment and Prevention of Sexual Abuse

4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005 USA
Phone: 503.643.1023 | Fax: 503.643.5084 | atsa@atsa.com | www.atsa.com

opportunity to offer the student engaging in sexual harassment individualized risk-based interventions to address the concerning behavior.

DEFINING EQUITABLE SERVICES

ATSA supports the concept that services should be offered to **anyone** needing services, whether they choose to report or not, and whether they have been reported or choose to ask for help with concerns about their own behaviors. This empowers institutions to offer the necessary support and services to all involved persons, as well as assists in identifying problem areas. Promoting early intervention not only supports victims/survivors and future student safety, it provides the opportunity to offer the students with problematic sexual behavior individualized risk-based interventions to address the concerning behavior with the goal of helping them receive the necessary supports to prevent a potential trajectory of repeated sexual harassment or violence.

Under the current rule, there are over 100 mentions of the need for prompt and equitable responses. These are primarily focused on the Title IX Coordinators response when notified as well as during the grievance procedures. There is also an opportunity here to use the standard of equitable when applied to equitable services for **all** students. Initial studies have shown that, although campuses offer a range of services for victims/survivors, many campuses do not offer the needed services for respondents or students concerned about their own behaviors (e.g., counseling, psychoeducational services, etc.). Indeed, in some cases, institutions are not renewing their Memorandum of Understanding with local rape crisis centers because there are not equal services or an available equal supportive relationship for students accused of sexual misconduct. Obviously what is needed for victims/survivors differs from what would be needed for students concerned about their own behaviors, accused students or those found responsible for sexual harassment or sexual assault; a clear definition of equitable services would encourage colleges and universities to establish the appropriate services for **all** parties involved. Appropriate services would include, but not be limited to specialized training, adequate staffing, and adequate resources to meet the needs of these students.

SUPPORTIVE MEASURES

ATSA supports implementing individualized supportive measures that are tailored to each situation which is addressed with the proposed language: “a Title IX Coordinator must offer supportive measures, as appropriate, to the complainant or respondent to the extent necessary to restore or preserve that party’s access to the recipient’s education program or activity.” We also agree with the language about “including temporary measures that [may] burden a respondent.” However, there is a missed opportunity here by limiting supportive

measures to the focus on restoring or preserving access to education programs or activity. Given the title of supportive measures, these could also be put in place to reduce risk of the responding party and prevent the potential of future misconduct.

Although a supportive measure may at times be a temporary inconvenience to the responding party, it does offer a campus the opportunity to evaluate risk and to engage the campus in supporting safety. Rather than focus on the burden to a student as the standard, the concept of safety and well-being for all students, including the respondent, could be introduced. After an allegation of sexual harassment or sexual assault has been made, supportive measures for the respondent could be viewed as a way to prevent any further accusation-and provide additional pro-social engagement to ensure further safety for all individuals.

INFORMAL RESOLUTION

ATSA fully supports the inclusion of Informal Resolution as an option for colleges and universities under the new Title IX rules. However, we are concerned that the rules allow for informal resolution without providing any guidelines for how or when the campus can decide whether students can engage in an informal resolution process. Even when both students agree to the informal resolution process, there may be other circumstances that would indicate this is not the best avenue for these particular students. As currently written, there is no standard offered for an administrative decision, or even defined as in the best interests of the students (rather than the campus), to proceed or not.

We are also concerned by the decision to retain the rule that requires campuses to use the standard "Presumption Not Responsible" for sex-based incidents until a determination is made and both parties are informed. This level of notice is not required by any other campus proceeding and is problematic for a number of reasons. It echoes the rape myth that people who report sexual harassment are lying. In some cases, this presumption may make it more difficult for a student to accept responsibility for what they have done -- which is key to the informal resolution process. We suggest that the standards revert back to language that determinations of responsibility are not reached until the conclusion of the grievance process. In this way, the presumptions cannot be perceived as aligned with either party.

SUMMARY

Everyone deserves to live free from sexual harassment, the threat of sexual harm, and sexual assault in educational, workplace, and all other environments. To that aim, ATSA works actively at preventing and responding most effectively to all forms of sexual violence. The new rules have created an environment that restores the balance created in the 1997 guidance while retaining some of the opportunities that were opened in the 2020 guidance. We believe that these new rules will encourage more support and reporting by students who have been harmed, as well as encourage more resources to address students who have engaged in some form of problematic sexual behavior to access the necessary interventions, they need to enable them to move forward safely. ATSA appreciates this important dialogue

that helps to examine the consequences and efficacy of proposed changes to Title IX. Within the framework of well-considered policies and regulations, the interests of all parties as well as the surrounding student environment can focus on safety and ultimately make the prevention of sexual harassment and sexual assault a reality.