

# **The Fight For Fair & Safe Campuses: Title IX Past, Present, and Future**

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# TITLE IX

History



# Title IX

“ No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”



Title IX is a **federal civil rights law** enacted in 1972.

It **prohibits gender -based discrimination** in educational institutions that receive federal financial assistance.

The Clinton, Bush, and Obama administrations all historically recognized that, to some degree, experiencing sexual violence prevents students from being able to fully access their education free from gender -based discrimination.



In 2011 and 2014 under the Obama-Biden administration went a step further when the Department of Education Office for Civil Rights issued what has come to be known as the “**Dear Colleague Letters**”.

The DCL’s sought to clarify for educational institutions their responsibilities under Title IX to prevent and respond to incidents of sexual assault and harassment.

The DCL’s are more commonly known as “**guidance**”.

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Some of the most notable information contained in the DCL's pertained to:

- Requiring that once a school knows or reasonably should know of possible sexual violence, it must take **immediate and appropriate action** to investigate or otherwise determine what occurred
- Mandating schools take action to take prompt and effective steps to **end the violence, prevent its recurrence, and address its effects**
- Clarifying **definitions of sexual assault and harassment**



Some of the most notable information contained in the DCL's pertained to:

- Establishing **preponderance of evidence** as the standard for grievance procedures
- Requiring grievance procedures to be **published publicly** , be **prompt and equitable** , and **survivors be notified** of the outcome of the procedure
- Establishing procedures for institutions to **protect survivors from retaliation**



# TITLE IX UNDER TRUMP





In **July 2017**, Sec. of Ed Betsy DeVos held a series of roundtables on Title IX and campus sexual assault.

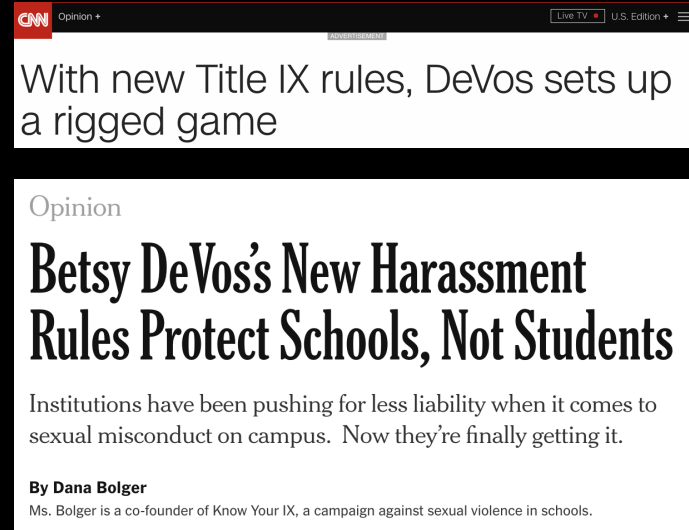
In **September 2017**, against the wishes of students and experts, Sec. DeVos rescinded the 2011 and 2014 guidance.

In its place, “**interim guidance**” was issued, but schools only followed it to varying degrees, or in some cases, not at all.



On August 29, 2018, the New York Times broke a story that they had received a leaked copy of Sec. DeVos's **proposed rule changes to Title IX** .

The leaked proposed rule changes immediately led to significant backlash from survivors, their allies, colleges, and national sexual violence prevention and survivor advocacy organizations.



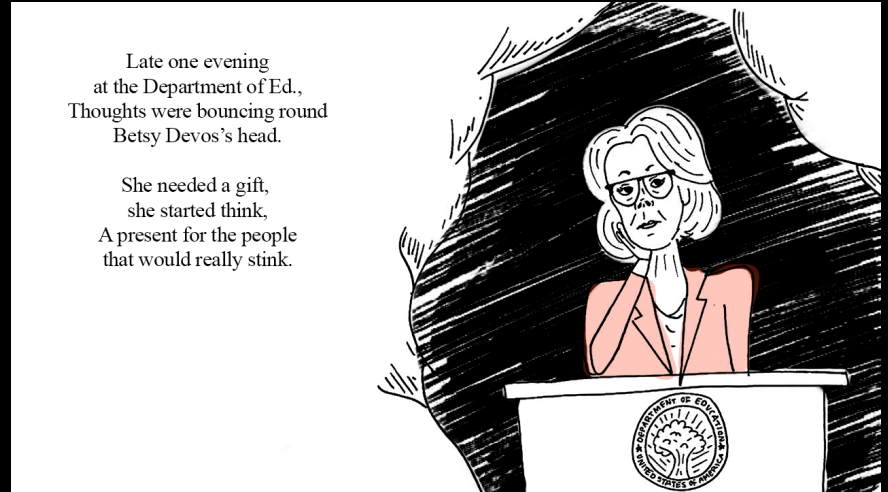
TITLE IX UNDER TRUMP



The Friday before Thanksgiving, Sec. DeVos and the Dept. of Ed **officially put forward their proposed rule changes to Title IX** on the DOE website.

On November 28, 2018 the proposed rule changes were officially put forward for a 60 day public comment period on Regulations.Gov.

125,000+ Public Comments were submitted.



TITLE IX UNDER TRUMP



# TITLE IX RULE



There are **11 Key Changes** that were enacted.

- 1) Narrows the definition of sexual harassment to: “Unwelcome conduct that is so severe, pervasive and objectively offensive” that it effectively denies a person access to the school’s education program or activity” adding that conduct could be harassment if “a reasonable person” would say it was
- 1) Requires colleges to hold live hearings during which alleged victims and accused perpetrators can be cross -examined to challenge their credibility
- 1) Limits the complaints that schools are obligated to investigate to only those filed through a formal process and brought to the attention of officials with the authority to take corrective action



There are 11 Key Changes that were enacted.

- 4) Makes schools responsible for investigating only incidents of sexual assault/harassment said to have occurred within their programs and activities
- 5) Permit schools to choose which evidentiary standard to use to find students responsible for misconduct —“preponderance of evidence” or “clear and convincing evidence”
- 6) Would only find schools legally culpable for mishandling allegations if they are proven to have been “deliberately indifferent,” in carrying out mandates to provide support to victims and investigate complaints fairly



There are **11 Key Changes** that were enacted.

- 7) Mandates Title IX Coordinators provide “supportive measures” to accused students
- 8) Permits mediation in cases between students, but not in cases that involve staff and students
- 9) Requires schools give accused students written assurance they are presumed innocent unless otherwise found culpable through a formal investigative and adjudicative process



There are **11 Key Changes** that were enacted.

- 10) Prohibits schools from retaliating against a student who may have been engaging in other forms of misconduct at the time of their assault (e.g. underage drinking)
- 11) Schools are not required to adopt a particular definition of consent with respect to sexual assault





# WHAT'S NEXT



On International Women's Day, the Biden Administration issued an Executive Order (EO) directing the Department of Education to review the Title IX rule change and make recommendations on what action can be taken.

WHAT'S NEXT



## Options for the Title IX Rule Include:

- Issue a stay on enforcement of current rule
- Issue technical assistance for schools to do “least harm” with existing rule in place
- Begin new NPRM process to revoke and write a new Title IX rule

It may take up to two full years for a new rule to be enacted.



What It's On Us has asked for:

- Public acknowledgement of harm of current rule by Department of Education
- Listening Sessions with Students
- Trauma-informed approach to new rulemaking process
- Center historically marginalized students in process
- Treat students like the experts they are



# Q&A



# THANK YOU!

For questions, comments, or just to say “Hi!”

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