

TITLE IX FINAL RULE (2020)

GUIDING PRINCIPLES

- **Historic Department of Education Recognition of Sexual Harassment as Sex Discrimination**

For the first time, the Department's Title IX regulations recognize that sexual harassment, including sexual assault, is unlawful sex discrimination. The Department previously addressed sexual harassment only through guidance documents, which are not legally binding and do not have the force and effect of law. Now, the Department's regulations impose important legal obligations on school districts, colleges, and universities (collectively "schools"), requiring a prompt response to reports of sexual harassment. The Final Rule improves the clarity and transparency of the requirements for how schools must respond to sexual harassment under Title IX so that every complainant receives appropriate support, respondents are treated as responsible only after receiving due process and fundamental fairness, and school officials serve impartially without bias for or against any party. (U.S. Department of Education Final Rule Overview, Aug. 2020)

- **Supporting Complainants & Respecting Complainants' Autonomy**

DIT will maintain and provide a resource list of supportive measures to complainants (i.e., individualized services to restore or preserve equal access to education, protect student and employee safety, or deter sexual harassment). Supportive measures are offered even if a complainant does not wish to initiate or participate in a grievance process.

Every situation is unique, and individuals react to sexual harassment differently. In accordance with the Final Rule, DIT's policy and procedures gives complainants control over the school-level response best meeting their needs. It respects complainants' wishes and autonomy by giving them a clear choice to file a formal complaint separate from the right to supportive measures. A fair and impartial grievance process will be used for complainants that protects complainants from being coerced or threatened into participating in a grievance process.

- **Non-Discrimination, Free Speech, and Due Process**

The Final Rule reflects values of equal treatment on the basis of sex, free speech and academic freedom, due process of law, and fundamental fairness. Schools must operate free from sex discrimination, including sexual harassment. Complainants and respondents must have strong, clear procedural rights in a predictable, transparent grievance process designed to reach reliable outcomes. The Final Rule ensures that schools do not violate First Amendment rights when complying with Title IX.

DIT'S RESPONSE TO SEXUAL HARASSMENT

- Under the Final Rule, any of the following conduct on the basis of sex constitutes sexual harassment:
 - A school employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct (often called "*quid pro quo*" harassment);
 - 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; or
 - Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. §12291(a)).
- Consistent with Supreme Court precedent and the text of Title IX, a school must respond 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.
 - The Final Rule expands “actual knowledge” to include notice to any elementary or secondary school employee, and states that any person (*e.g.*, the alleged victim or any third party) may report to a Title IX Coordinator in person or by e-mail, phone, or mail. The Final Rule also specifies that a school’s “education program or activity” includes situations over which the school exercised substantial control, and also buildings owned or controlled by student organizations officially recognized by a postsecondary institution, such as many fraternity and sorority houses.
- DIT’s response includes offering supportive measures to every complainant, with or without a formal complaint.
 - DIT and all schools must investigate every formal complaint (which may be filed by a complainant or by a school’s Title IX Coordinator). If the alleged conduct does not fall under Title IX, then the school may address the allegations under the DIT’s own Student Code of Conduct and provide supportive measures.

A FAIR GRIEVANCE PROCESS

The Final Rule requires schools to investigate and adjudicate formal complaints of sexual harassment using a grievance process that incorporates due process principles, treats all parties fairly, and reaches reliable responsibility determinations. A school’s grievance process must:

- Give both parties written notice of the allegations, an equal opportunity to select an advisor of the party’s choice (who may be, but does not need to be, an attorney), and an equal opportunity to submit and review evidence throughout the investigation;
- Use trained Title IX personnel to objectively evaluate all relevant evidence without prejudgment of the facts at issue and free from conflicts of interest or bias for or against either party;
- Protect parties’ privacy by requiring a party’s written consent before using the party’s medical, psychological, or similar treatment records during a grievance process;
- Obtain the parties’ voluntary, written consent before using any kind of “informal resolution” process, such as mediation or restorative justice, and not use an informal process where an employee allegedly sexually harassed a student;
- Apply a presumption that the respondent is not responsible during the grievance process (often called a “presumption of innocence”), so that the school bears the burden of proof and the standard of evidence is applied correctly;
- Use either the preponderance of the evidence standard or the clear and convincing evidence standard (the same standard will be used for formal complaints against students as for formal complaints against employees);
- Ensure the decision-maker is not the same person as the investigator or the Title IX Coordinator (*i.e.*, no “single investigator models”);
- For postsecondary institutions, hold a live hearing and allow cross-examination by party advisors (never by the parties personally);
- Protect all complainants from inappropriately being asked about prior sexual history (“rape shield” protections);
- Send both parties a written determination regarding responsibility explaining how and why the decision- maker reached conclusions;
- Effectively implement remedies for a complainant if a respondent is found responsible for sexual harassment;
- Offer both parties an equal opportunity to appeal;
- Protect any individual, including complainants, respondents, and witnesses, from retaliation for reporting sexual harassment or participating (or refusing to participate) in any Title IX grievance process;

- Make all materials used to train Title IX personnel publicly available on the school's website (see DIT website <https://www.diversinstitute.edu/programs/commercial-diver/disclosures/>) or, if the school does not maintain a website, make these materials available upon request for inspection by members of the public; and
- Document and keep records of all sexual harassment reports and investigations.
- DIT will employ both internal and external resources to follow these guidelines and offer a fair grievance process to a complainant.

SEX DISCRIMINATION REGULATIONS

Relating to sex discrimination generally, and not only to sexual harassment, the final regulations also:

- Affirm that the Department may require schools to take remedial action for discriminating on the basis of sex or otherwise violating the Department's Title IX regulations;
- Expressly state that in response to any claim of sex discrimination under Title IX, schools are never required to deprive an individual of rights guaranteed under the U.S. Constitution;
- Account for the interplay of Title IX, Title VII, and FERPA, as well as the legal rights of parents or guardians to act on behalf of individuals with respect to exercising Title IX rights;
- Disseminate their non-discrimination policy and the Title IX Coordinator's contact information to ensure accessible channels for reporting sex discrimination (including sexual harassment), and notify students, employees, parents, and others of how the school will respond to reports and complaints of sex discrimination (including sexual harassment):
- DIT's Title IX Coordinator is Lynda Sharp, titleix@diversinstitute.edu, 206-783-5542. DIT's Title IX information is distributed to incoming students via the Orientation Packets, including the DIT Student Handbook and posted on the DIT website at: <https://www.diversinstitute.edu/programs/commercial-diver/disclosures/>
- DIT follows a non-discrimination policy as listed and disseminated in the school catalog (p.3) and posted on DIT's website: <https://www.diversinstitute.edu/programs/commercial-diver/disclosures/>

NON-DISCRIMINATION POLICIES

The Divers Institute of Technology will not deny admission to or otherwise discriminate against any individual on any legally recognized basis under federal, state or local law including but not limited to: race, color, religion, national origin, sex, sexual orientation, age, veteran or military status, or disability status as a disabled veteran or a Vietnam era veteran. DIT complies with the Americans with Disabilities Act and does not discriminate against or deny admission to qualified individuals with disabilities, including the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability, unless such disability is determined by a medical authority cognizant to render an individual not physically qualified to complete our professional commercial diving course. This policy applies to both our admissions practices and our educational programs. Students with disabilities who are determined as physically qualified to enroll in our program may request reasonable accommodations for disabilities from the Director of Training or the Assistant Director of Training. DIT will work with students to provide reasonable accommodations for students with disabilities within the scope of our training program and safety procedures.