

Title IX Coordinator Training Online Course

Class One: Definitions, Jurisdiction and Preliminary Matters

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Training Course Does Not Constitute Legal Advice


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Class Overview

- The New Administration: What to Expect?
- Definitions
- Jurisdiction
- Formal Complaints
- Supportive Measures
- Dismissals
- Informal Resolution



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What's Next?

What is going to happen to the DeVos Title IX Rules under President Biden?

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NEWS

DECISION 2020: [GA Reports](#) [GA Senate](#) [Senate](#) [State results](#) [Prisoners](#) [Power](#)

Biden wants to scrap Betsy DeVos' rules on sexual assault in schools. It won't be easy.
The Trump administration's Title IX regulations prioritize students accused of sexual misconduct instead of their accusers, critics say.

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Biden said he wants to undo DeVos' Title IX rule. How would he replace it?
Revoking the regulation would not be easy, and colleges would need guidance for addressing campus sexual assault in the interim.

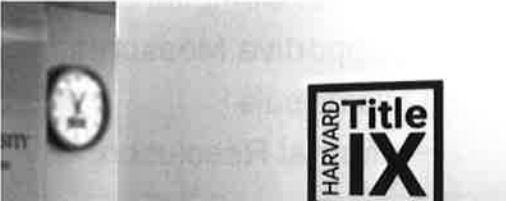


The Harvard Crimson

Biden Administration Expected to Reverse DeVos's Title IX Regulations, Legal Experts Say

In early May 2020, former Secretary of Education Betsy D. DeVos released a controversial Title IX rule that drummed up controversy, erudition, and confusion at Harvard and beyond. How will the incoming Biden administration deal with the rule?

BY JESSICA LEE AND CHRISTINA T. PHAM



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Litigation Challenges

- Know Your IX, et al. v. DeVos filed May 14, 2020 in D. Md.
- New York v. U.S. Department of Education, filed June 4 in S.D.N.Y.
 - Motion for Preliminary Injunction (June 25, Denied); Stipulated Dismissal without Prejudice (November 4)
- Pennsylvania, et al. v. DeVos, filed June 4 in D.D.C.
 - Motion for Preliminary Injunction (June 23, Denied)
- Victim Rights Law Center, et al. v. DeVos, filed June 10 in D. Mass.
 - Currently on trial before Judge William G. Young, leave to file amended complaint granted.

EDUCATION

Biden vows 'quick end' to DeVos' sexual misconduct rule

It's a reversal of Education Secretary DeVos' Title IX rule.



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- Courts unlikely to find DeVos rules “**arbitrary and capricious.**”
- **Biden Administration** will likely seek to roll back regulations. But, to do so it will need to go through same time-consuming process ED just completed.
- **Repeal? Repeal and Replace?**
 - Estimated two years
 - Repeal and replace
 - Single change in rules would require only one change and would be less challenging to institutions
 - Relatively longer effectiveness of existing rules
 - Repeal; replace later
 - Quicker; presumably could implement very quickly
 - Would involve at least two more changes to regulations
 - What rules apply in the interim?
- What will **enforcement** look like in Biden’s OCR?
- **In the meantime, the rules are the law, and any college receiving federal funds must obey them.**

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Where Might We Go? No Crystal Ball

- How might changes play out? What controversial features will be kept? Abandoned?
 - Will the response obligations be significantly changed?
 - Formal complaint requirement?
 - Live hearing requirement?
 - Cross-examination and exclusionary rules?
 - Role of advisors?
 - Will the scope of what constitutes "sexual harassment" and requires a prescribed response be expanded?
 - Severe and/or pervasive and objectively offensive?
 - Participating in programs and activities at the time of the formal complaint?
 - Application to employees?



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Definitions

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Definition of Sexual Harassment

Sexual Harassment includes one or more of the following:

1. Quid Pro Quo
2. Hostile Environment
3. Clery Definitions

§106.30(a)



Quid Pro Quo

- Conditioning provision of an aid, benefit or service on participation in unwelcome sexual conduct
- Carried out by an employee



Hostile Environment

- Unwelcome sexual conduct
- “So severe, pervasive, *and* objectively offensive”
- “Effectively denies equal access”
- “Determined by a reasonable person”
 - “[S]tanding in the shoes of the complainant.” (Preamble, p. 514)



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Clery Definitions

- **Sexual Assault** – a forcible or non-forcible sex offense under the FBI UCRS (as defined by the Clery statute)
 - FBI UCRS/SRS definitions or NIBRS Sex Offenses definitions
 - Focus on proscribed actions rather than terms
- **Dating Violence** – violence by a person who is or has been in a romantic or intimate relationship (Clery statute)
- **Domestic Violence** – violence by a current or former spouse or intimate partner, co-parent, living partner, youth or other under state law
- **Stalking** – fear for safety or safety of other or suffer substantial emotional distress

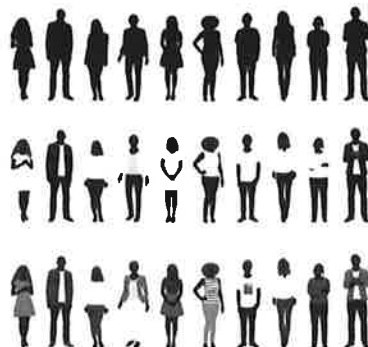


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Complainant & Respondent

- Complainant – an individual who is alleged to be the victim of conduct that could be sexual harassment
- Respondent – an individual who has been reported to be the perpetrator of conduct that could be sexual harassment



Actual Knowledge

- Institution has actual notice of sexual harassment or allegations when reported to the:
 - Title IX Coordinator(s)
 - Official With Authority to Take Corrective Actions (OWA)
- Not a respondent
- Not others who may or must report



Jurisdiction

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Education Program or Activity



- Locations, events, or circumstances over which IHE exercises substantial control over *both* the respondent and the context in which the sexual harassment occurred, *or*
- Any building owned or controlled by a recognized student organization, *and*
- Against a person in the United States

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