



BETSY DeVOS'S PROPOSED TITLE IX REGULATIONS: A Q&A WITH NEPC FELLOW ELIZABETH MEYER



U.S. Secretary of Education Betsy DeVos is trying to transform how sexual harassment and assault are addressed under **Title IX**. In November, she released a **proposed regulation** that would substantially alter the rules guiding the implementation of the main federal law pertaining to gender-related discrimination in education. The regulation would replace Obama-era civil rights guidance that DeVos lifted in 2017.

The proposed changes have been controversial, **attracting more than 100,000 comments** (the comment period is now closed, but online submissions can be found here: <https://www.regulations.gov/>). Importantly, the Obama guidance was just that – a letter providing guidance about how the current administration will understand and enforce the law. The current rulemaking process will change the implementing regulations for Title IX, meaning that the legal requirements themselves will change. If, for example, a college or university does not change its due process procedures to comply with the changes, then it will be in violation of the law.

In a **statement**, DeVos said that her intent was to ensure a “safe and nurturing environment.” She continued:

That starts with having clear policies and fair processes that every student can rely on. Every survivor of sexual violence must be taken seriously, and every student accused of sexual misconduct must know that guilt is not predetermined. We can, and must, condemn sexual violence and punish those who perpetrate it, while ensuring a fair grievance process.

However, many commenters have suggested that the changes are *not* fair in that they are tilted toward the benefit of those accused of sexual harassment or assault.

In the Q&A below, National Education Policy Center Fellow [Elizabeth Meyer](#) explains the major changes proposed by DeVos, and discusses how they might affect universities and schools. Meyer is the associate dean of teacher education at the University of Colorado Boulder. An expert on gender and diversity in schools, Meyer is the author of *Gender, Bullying, and Harassment: Strategies to End Sexism and Homophobia in Schools* and *Gender and Sexual Diversity in Schools*. She is also co-editor of the *Gender and Sexuality in Education* series for Peter Lang Publishing. She writes a [blog](#) for *Psychology Today*.

Q: Please help our readers understand the three or four main changes from the Obama administration guidelines that are being proposed by Secretary DeVos.

A: DeVos has proposed several changes to Title IX guidance since arriving at the education department. The most recent ones impact how colleges and universities respond to and investigate allegations of sexual assault. The other ones include rescinding Obama-era guidance about transgender students in K-12 schools and general guidance for Title IX coordinators, which I explain in detail [here in my blog](#).

Q: What are the pros and cons of these changes?

A: Let me focus just on the due process changes in the proposed rule. Advocates for these changes argue that they will be more fair for the alleged perpetrator in that they limit the types of behaviors that are protected by Title IX enforcement. They also limit “interim measures” that Institutions of Higher Education (IHEs) can take until a hearing can be held and a decision rendered. They argue that requiring a higher standard of proof and allowing complainants to be questioned by the alleged perpetrator will lead to better due process and fewer false claims.

Many universities and advocates for survivors of sexual assault state that these changes will make it harder to convince people to come forward and file reports, as the new guidance offers little protection and support for survivors of sexual assault. This will make it harder to respond to cases of sexual misconduct and to address related forms of sex discrimination on campus. My university, the University of Colorado Boulder, [issued a statement](#) saying that their current procedures have been developed to ensure all students get a fair process, but that the university will ensure it remains in compliance with federal law.

Q: What are the odds that these changes will be implemented as is?

A: The comment period just closed, and the department received a high volume of responses. I don’t have faith that the department will listen to this feedback from educators, lawyers, and advocates. I predict that it will likely move ahead with the language as proposed, with minor changes at best.

Q: If implemented, how might these changes impact colleges and universities? How might they impact K-12 schools?

A: *These changes primarily impact institutions of higher education, so the effect on K-12 schools is minimal as most school districts do very little in terms of Title IX enforcement. IHEs that don't already have a robust Title IX enforcement arm will likely adopt the DeVos approach as-is and adjust their practices accordingly – to the detriment of the campus climate. Other IHEs, including my own, are likely to keep as much of their existing practices as they can, consistent with the new regulations. For instance, the proposed regulations expressly allow IHEs to choose between the “preponderance of evidence” standard of proof adopted by the Obama guidance letter and a more stringent “clear and convincing” evidentiary standard. Many IHEs will likely decline the invitation to make this change out of concern that it will discourage victims from coming forward. But other elements of the proposed regulations will be required of IHEs, with the most troubling being a guarantee that the alleged assailant be allowed to cross-examine the accuser. It is easy to see how the victim of a sexual assault would shy away from putting themselves in that position.*

Q: **I wonder if you could help us think about how these proposed changes can best be understood within the context of the #MeToo movement and the more than 100,000 public comments submitted. How do you think this context might affect the final rule and the reaction to it among colleges and universities as well as K-12 school districts?**

A: *I think it is horrific that DeVos would propose such changes during an era where there is a heightened public awareness of and sensitivity to issues of sexual harassment and assault. It is clear that this administration is not attentive to defending the interests of groups who have been historically marginalized and violated by people in positions of power. I anticipate there will be some resistance from progressive educational institutions to protect the advances they have made towards safety and protection around issues of sex discrimination. For example, the Attorney General in Colorado stated:*

In its current form, the procedures required by the Proposed Rule deny survivors the dignity, equality, and equal rights to education that Title IX aims to protect,” He added that the proposed changes would require Colorado’s institutions of higher education “to undergo costly and administratively difficult changes to these well-established systems. Such disruptive changes would impose substantial burdens on Colorado (institutions of higher education), requiring the abandonment of approaches that work well – all in favor of an untested approach dictated by the federal government.

Other institutions will quickly and gladly adopt the lower standards in the name of compliance—even though it actively goes against the language of Title IX—which is to prevent discrimination on the basis of sex in educational institutions. By lowering this bar and changing the standards for investigations, DeVos and the Department of Education are communicating that they don't care about survivors of sexual assault and are more interested in maintaining the status quo—which research shows is terrible in terms of sexual assault on college campuses. For more evidence on this, I encourage folks to watch “The Hunting Ground,” a powerful documentary on issues related to sexual assault and Title IX enforcement on college campuses.

NEPC Resources on Gender Issues

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