


The State University of New York

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TRAINiNG



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The New Department of Education Title IX Regulations: What They Mean for Agencies That Serve Student Survivors in New York State

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Title IX
Title IX of the Education Amendments of 1972

regardless of whether the residence of such public school pupils or the principal offices of such public school system, public school or public school board is situated in the northern, eastern, western, or southern part of the United States.

TITLE IX—PROHIBITION OF SEX DISCRIMINATION

SEX DISCRIMINATION PROHIBITED

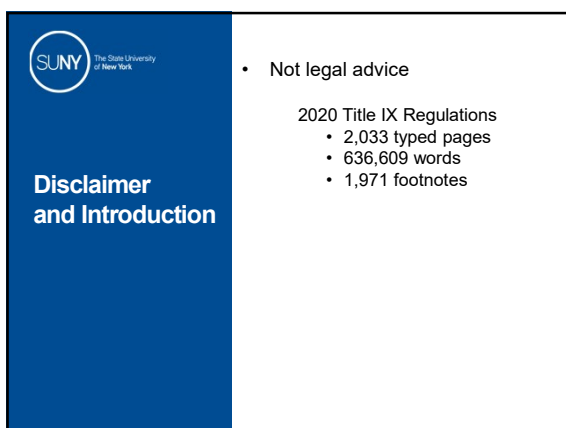
Sec. 901. (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) in regard to admissions to educational institutions, this

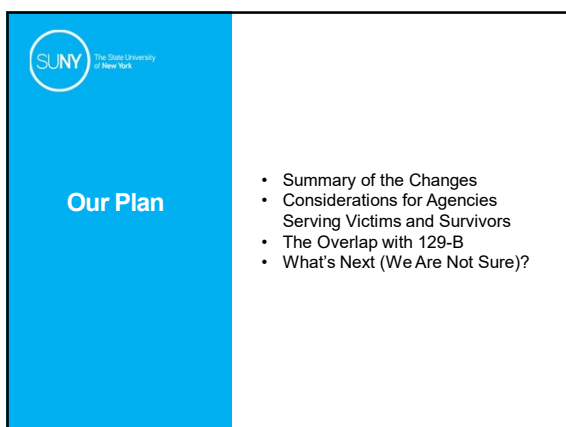
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What we do at SUNY

- Comprehensive Survivor-Centered Response and Victim Outreach
- System-wide prevention programming

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What we do at SUNY: Prevention Programming

- SUNY's Got Your Back
- SPARC
- Dating/domestic violence prevention programming





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Response Resources

- **SUNY SAVR**
 - [Response.suny.edu](https://response.suny.edu)
- **SUNY Visa and Immigration Resources**
 - [Suny.edu/visa](https://suny.edu/visa)



Customize and Publish in English and Other Languages

When many who study in certain regions in the U.S. understand English well, having a little of history and trivia may benefit from a document that is available in their native language, while still being customized to the resources available on campus and in the community. To aid students in getting the service, we have translated the document into 100 languages.





response.suny.edu

Connecting you to:

- Academic/Medical Providers
- Rape Crisis/Domestic Violence Resources
- Sexual/Public Safety
- LGBTQ+ Resources
- Resources for Immigrants
- Legal Resources
- Title IX & Campus Response
- Key Policies in 100 Languages
- RIT's Diversity & Sexual Violence Hotline: 1-800-842-4856
- SUNY's Confidentiality Policy
- SUNY's Sexual Assault Policy
- Anytime, Anyplace, Anonymous
- SUNY's Office of Victim Services

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Response Resources

- **SUNY SAVR**
 - [Response.suny.edu](https://response.suny.edu)




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Prevention










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SUNY's Got Your Back:
Comfort Kits For Victims and Survivors

- **Free for Victim Service Providers**
 - Available for any victim of crime
- **We are still delivering!**
- **Request bags:**
 - [Tinyurl.com/gotyourbackrequests](https://tinyurl.com/gotyourbackrequests)


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What we should be thinking about as we serve survivors

- Access and Equity
- Decrease in formal process participation
- Navigating harmful messaging

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Title IX Regulations

Major ED Changes:

- Standard for campus responsibility under TIX
- Required ~~due process~~ "grievance"
- Significant staffing and training requirements for all engaged
- Other technical changes

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Timeline

Proposed

- Released November 2018
- Comments Closed January 2019 (124,196 comments received)

Final

- Pre-print released May 6, 2020
- Federal Register publication expected May 19, 2020
- Effective Date August 14, 2020



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Timeline

Final

- Pre-print released May 6, 2020
- Effective Date August 14, 2020

To Be Clear:


- 87 days to comply (compare to 8+ months for Regulations under Master Calendar)
- Not accurate to say “should’ve expected and planned” based on Proposed.
 - That is not how the law works
 - There are major differences
- COVID-19



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The Difference of Regulations


- Difference between statute, regulations and guidance.
- ED has used sub-regulatory guidance (1997, 2001, 2006, 2011, 2014, 2015, 2017) to guide K-12 and higher ed response to harassment and violence.
- 2020 Regulations have the force of law.
- Penalty: ED’s OCR can take remedial action. Major penalty is loss of eligibility for federal funds (after opportunity for voluntary compliance).



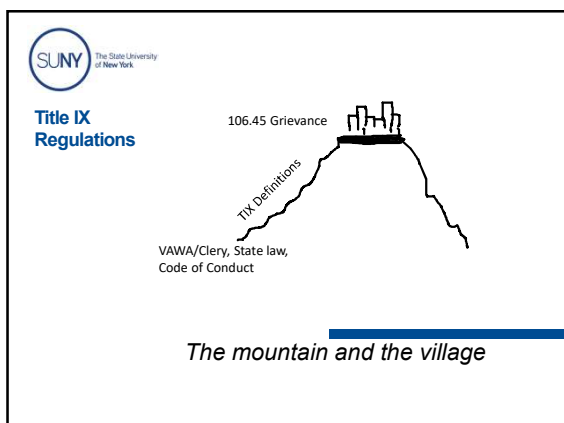
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Enough is Enough & Preemption

- Clery Act (as amended by VAWA) occupies overlapping space
- New York Education Law 129-B (Enough is Enough) occupies overlapping space
- 129-B comports with VAWA/Clery
- Preemption (106.6[3][h]): “To the extent of a conflict between State or local law and title IX [regulations], the obligation to comply with [the regulations] is not obviated or alleviated by any State or local law.”



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What Is the Same?

- Providing Services On Campus
- Providing Resources Off Campus
- Law Enforcement
- Incidents that do not meet the Final Rule standards (do not meet one of the three definitions, do not occur in a program/activity, do not occur in US)

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Same Within Title IX

- Very specific requirements for grievance process
 - Equitable process, equal opportunities for parties
 - Follow your process before issuing sanctions*
 - Supportive measures aren't sanctions
 - Evaluate all relevant evidence objectively
 - No conflicts of interest for investigators, decisionmakers
- Presumption of Not Responsible until determination

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Same Within Title IX



- Reasonably prompt timeframes
- Equal-access to appeals process
- Can have hearings with parties in separate rooms via technology
- Informal resolution is possible
- Simultaneous, written outcomes with rationale
- When results become final

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What is Different



- Step 1: Narrowed definition of actual knowledge (for higher ed; K-12 is different)
 - No constructive knowledge
 - Ability or obligation to report ≠ actual knowledge
- Step 2: Formal Complaint
 - Complainant must be participating in or attempting to participate in education program or activity at time of complaint
 - Filed with TIXC in person, by mail, e-mail, or other methods of contact
 - Physical or digital signature or related

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Definitions



- **Actual Knowledge**
 - Not constructive
 - Difference between higher ed and K-12
 - Ability or obligation to report ≠ actual knowledge
- **Complainant** (129-B Reporting Individual)
- **Respondent** (same as 129-B)
- **Consent** (No Fed definition, 129-B defines)

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Definitions



- **Formal Complaint** (document filed by complainant or signed by TIXC alleging harassment and requesting investigation)
 - Complainant must be participating in or attempting to participate in education program or activity at time of complaint
 - Filed with TIXC in person, by mail, e-mail, or other methods of contact
 - Physical or digital signature or otherwise indicates complainant is person filing.

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Definitions



- **Sexual Harassment:** Conduct on the basis of sex. Three types:
 - Employee quid pro quo;
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive **and** objectively offensive that it effectively denies a person equal access to educational program or activity;
 - VAWA Sexual Assault, Domestic Violence, Dating Violence, or Stalking.

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Geography



- No Title IX coverage outside the United States (compare with VAWA and 129-B)
- Harassment "in an education program or activity"
 - locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a recognized student organization.

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Due Process Requirements



- New:
 - Very specific, detailed written determination, including
 - Procedural timeline for various steps
 - Application of code of conduct (?)
 - Whether remedies relate to restoring access to P&A
 - Requiring appeals, and prescribed bases
 - Equal chance to submit written statement in support of or in opposition to the outcome

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TIX Regulations v. VAWA/Clery



TIX Regulations	VAWA
Quid Pro Quo by Employees, VAWA Crimes, and Other Sex-Based Harassment that is severe and Pervasive.	VAWA Crimes: Domestic Violence, Dating Violence, Sexual Assault, and Stalking
On Campus and in certain Off Campus Programs and Activities. Also Certain Student Organization Properties. Never applies outside U.S.	On and Off Campus.
Provide Resources	Provide Resources
Maximized Due Process for Public and Private Colleges	Standard Due Process/Fair Process
Specific Training for Certain Key Staff (not annual)	Annual Training for all who touch a case at all parts of process

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TIX and 129-B



- Preemption
- Title IX includes VAWA Definitions (so does 129-B)
- We are still looking at technical overlaps:
 - Past sexual history
 - Past mental health history
 - Withdrawal of Complainant
- This will certainly conflict with the spirit of 129-B

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TIX and 129-B



- Not covered by the Regulations:
 - Affirmative Consent
 - Amnesty
 - Climate Surveys/SED Data Reporting
 - Prevention
 - Bill of Rights and Response for non-covered activities
 - Privacy in Legal Challenges

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Coverage



Covered by the Regs	Gray Zone	Not Covered by the Regs
On Campus Organizations owned or controlled by recognized student organizations	Harassment online	Off campus conduct Anything outside of the U.S.
Employee complaints of sexual harassment as defined by the rules	Knowing whether the conduct in the complaint meets the definition in the rules (conclusory?!)	EE misconduct that doesn't meet the TIX definition of sexual harassment (could be covered by conduct code)
Severe, pervasive, and objectively offensive unwelcome conduct based on sex		Severe conduct that is not pervasive and vice versa


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Other Factors



- Factors that may impact obligations
 - Three lawsuits
 - [Know Your IX, et al., v. Devos filed May 14, 2020 in the U.S. District of Maryland](#)
 - [New York v. U.S. Department of Education, filed June 4 in the U.S. Southern District of New York](#)
 - [Pennsylvania, et al. v. Devos, filed June 4 in the U.S. District for the District of Columbia](#)
 - Congressional Review Act (unlikely success)
 - November 3, 2020

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Joint Guidance on Title IX Regs


<https://system.suny.edu/sci/tix2020/>

Joint Guidance on Federal Title IX Regulations


A Joint Guidance on Title IX Regulations to Assist Institutions

The United States Department of Education is expected to release Final Regulations under Title IX of the Education Amendments of 1972 sometime in 2020. To assist institutions with understanding the regulations and the effect the regulations have, and the attorneys listed on the right, have decided to work together to issue a Joint Guidance. In the Joint Guidance, we will review each provision, provide analysis including possible barriers, or conflicts with the Title IX Act as amended by the Violence Against Women Act and various state laws, and provide initial guidance regarding implementation and challenges that may arise.

The Joint Guidance is a project of about 40 individual attorneys who work on campus Title IX issues (see our participants listed).



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Title IX Regulations


Significant possible changes for Title IX investigations and adjudications

- What will this mean for students
- Talking with students
- Possibility of litigation


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Discussion

- **SUNY SCI Analysis:** <https://system.suny.edu/sci/news/5-19-20-title-ix-regulations/index.html>
- **Joint Guidance:** <https://system.suny.edu/sci/tix2020/>

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