

## About Title IX

Title IX is a section of federal civil rights law that states “No person in the United States shall, on the basis of sex, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

This may be most well-known for its effect within college athletics. Equally important, however, is Title IX’s impact on the ability of colleges and universities to fight against harassment and discrimination based on gender occurring anywhere on their campuses.

The Title IX regulations underwent significant changes in the last two years, with substantial changes expected in the near future. The Biden administration has announced it plans to unveil in April 2022 an overhaul that will essentially rewrite the current regulations. Colleges and universities must stay current with the requirements as they continue to evolve. **We can help.**

## Our Approach

Tanenbaum Keale’s team of experienced attorneys is available to conduct thorough and impartial Title IX investigations and prepare the subsequent written investigation reports. Our attorneys draw upon their established litigation skills in the detailed evaluation of misconduct complaints and handling them through to resolution. We are also prepared to serve as advisors on behalf of colleges and universities in live Title IX hearings, including through the provision of assistance to the hearing panels as they draft post-hearing written determinations.

Our attorneys are also available to consult and provide guidance on implementing the new Title IX regulations, and with training a school’s Title IX personnel to ensure compliance with the new processes.



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## August 2020 Title IX Changes

The U.S. Department of Education's Final Title IX Regulations went into effect on August 14, 2020. The new regulations have significant changes from prior guidance, with the majority of the changes being made with the stated goal of equalizing the due process rights for each of the parties involved.

A breakdown of some of the most significant changes:

- The definition of sexual harassment has been narrowed. With the exception of stalking, dating violence and sexual assault, the conduct complained of must be “severe, pervasive and objectively offensive” in order to violate Title IX.
- As part of that new process, all complaints must be resolved via a live hearing process, with all parties allowed to utilize advisors of their own choosing.
- The individual accused of wrongdoing (now referred to in the regulations as “the Respondent”), is presumed innocent until the investigation process is complete. This change will no longer allow schools to remove the Respondent from campus or restrict their movement on campus while the investigation is ongoing.
- Cross-examination of the Complainant and the Respondent is now permitted, though this examination will be done by advisors to the parties – the parties themselves will not be permitted to cross-examine each other.
- Schools must provide all evidence accumulated regarding the allegations to all parties at least 10 days prior to any response deadline.
- There will no longer be a specific time period within which the investigation must take place. Instead, a “reasonably prompt” standard will be used.

Our attorneys are available to assist colleges and universities in all aspects of Title IX investigation and retaliation matters, and to help navigate the best approach to implementation and compliance, particularly in light of the rapidly evolving nature of the regulations. We are available to consult and provide guidance on the best methods to work with the requirements of both the regulations now in effect and, more importantly, the changes that are expected to occur in 2022.

## Anticipated Changes in Early 2022

While it is too early to determine the final form of the anticipated amendments to the current Title IX regulations, the Education Department has signaled its intent to substantially revise the policies that will guide colleges and universities in how they respond to allegations of sexual discrimination, assault and harassment. Schools can expect these changes to include a host of new rules that broaden the definition of sexual harassment, amend the procedures for live hearings currently in effect, and that provide greater protections for students based on sexual orientation and gender identity, including transgender students.

