

TITLE IX NEW REGULATIONS BOARD MEMO

To:	MATC Board of Directors
From:	Neil Ross, Dean of Student Services
Subject:	Title IX Regulations
Date:	September 29, 2020

Title IX Background

In 2011, the Obama-era Department of Education (ED) perceived that colleges needed to be more victim-centered in addressing sexual violence and should have more transparent and accessible policies and procedures for addressing complaints. At the instigation of then Vice-President Joe Biden, ED issued a set of guidelines for colleges under Title IX in what is known as the Dear Colleague Letter. That letter resulted in investigation-centered approaches that were trauma-informed, confidential, and relatively informal. Almost immediately, accused students and employees began to sue colleges for violations of their due process rights. By 2017, ED under the Trump administration had taken a different perspective and withdrew the 2011 Dear Colleague Letter while also announcing that new Title IX regulations were needed to better safeguard the due process rights of accused individuals. The regulatory process took two years, with new regulations published in May 2020 that took effect on August 14, 2020.

Title IX New Policies and Procedures (Final Rule)

The 2020 Title IX regulations required all colleges to revise or rewrite their policies and procedures for addressing sex offenses, including sexual harassment, sexual assault, domestic violence, dating violence, and stalking. The regulations include fifteen pages of new requirements, and more than 2,000 pages of explanation of the provisions within those fifteen pages. The bottom line is that the college's policies are not all that different than before but the procedures for resolution of complaints have substantially changed.

Summary of New Regulations:

- Title IX protects students and employees who are impacted by sexual harassment, sexual assault, domestic violence, dating violence, and stalking. When these behaviors occur, and a formal complaint is made, the college is obligated to address and remedy them and ensure that no one is denied effective access to the educational program of the college.
- Colleges have jurisdiction requirements that they must follow to determine whether a complaint falls within Title IX or is to be addressed within other college policies and procedures.
- Complainants are well-protected by the regulations in terms of supportive measures that are offered by colleges to try to address the impact of sex offenses.
- Complainants and respondents are each entitled to an advisor of their choosing (who can be an attorney) throughout the resolution process, and the college can provide this advisor to each party, if needed.
- The regulations have now created options for informal resolution that were discouraged by the Dear Colleague Letter.
- To protect the due process rights of respondents, colleges are required to use a formal grievance process for certain types of allegations. That formal process includes an investigation, a live hearing,

questioning of the parties through their advisors, a determination by an objective decision-maker, and an appeal.

For an example of a flow process of the procedure refer to appendix A provided by ATIXA.

Association of Title IX Administrators (ATIXA) Guidance

Who is ATIXA?

ATIXA provides a professional association for school and college Title IX Coordinators, investigators, and administrators who are interested in serving their districts and campuses more effectively.

*Policy Guidance*¹

The ATIXA panel of experts has consulted internally and with external attorneys. Many of the attorneys share a consensus view that the Department of Education is out on a limb with some elements of the new regulations, and that the final rule is susceptible to litigation. It's doubtful the regulations in their entirety will be struck down, but some portions or sections may be.

For that reason, and because of the impending 2020 election, ATIXA's advice is that because the courts and the election will likely put the future of the Title IX regulations into serious question, it would be imprudent for any recipient to issue new policies and procedures that supersede previous policies and procedures on anything but an interim basis.

MATC's Response

MATC spent the past few months developing a comprehensive Interim sexual misconduct policy that strikes an effective balance: complying with the new federal mandates; sustaining our commitment to reducing sexual misconduct, protecting students and employees, and creating an atmosphere that leaves individuals comfortable about coming forward; and ensuring a fair process for all involved.

- The College continuing to review, respond to, and, where appropriate, investigate and adjudicate reports of sexual harassment and sexual misconduct impacting members of the community, even where those reports may involve allegations of misconduct that may fall outside of the narrow requirements prescribed by the new regulations.
- The College will provide an advisor of its choice free of charge to conduct cross examination on behalf of a party in circumstances where the party does not have an advisor.
- The College will continue to apply a "preponderance of the evidence" standard in cases of alleged sexual harassment or sexual misconduct made against students, faculty or staff at the college.
- The College continuing to offer supportive measures (such as confidential assistance through WellConnect, academic support, etc.) with or without participating in the formal investigation/adjudication process

¹ ATIXA. (2020). *ATIXA Interim Policy Guidance*. https://atixa.org/?download_library_file=68079&tkn=c0ce4af503