
Contemporary Issues and Opinions

Title IX: Rebuild or Rescind?

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In light of the rescinding of two guiding pieces developed in President Obama's era, the U.S. Department of Education's Office of Civil Rights has begun to obscure the protocol of handling issues related to Title IX for many college and university professionals and mandated reporters of the institution (Brown, 2017). This discussion is in support of strengthening Title IX's guiding pieces from the Obama-era. Followed by the views that support Secretary DeVos's rescinding of these pieces and an institution's increased flexibility to manage incidents of sexual misconduct, the author will examine how these arguments dismiss the due process for student survivors of sexual misconduct. The author will conclude with an argument that highlights why the reimplementation of President Obama's Title IX guidelines and procedures are desirable for our students' educational success.

The law which we refer to as Title IX directly outlines an institution's response to sexual assault, sexual violence, and overall discrimination on the basis of sex (Title IX, Education Amendments of 1972). Effective in 1972, Title IX has evolved from prohibiting educational opportunities on the basis of sex to a law that now holds institutions responsible for preventing and handling situations of sexual misconduct to ensure a student's success (Brodsky & Deutsch, 2015). As mentioned by Brodsky and Deutsch (2015), women came forward

with multiple concerns regarding sexual harassment and sexual misconduct—this was primarily seen in the workplace. Women frequently received sexually charged attitudes, behaviors, orders, and comments in their work environments. These patterns increasingly manifested on college campuses, ultimately impeding a student's determination and potential to pursue their education (Brodsky & Deutsch, 2015). Because institutions of higher education are committed to student learning and academic achievement, Title IX serves to reinforce this promise. With the rescinding of guidelines for Title IX, it is difficult to presume how institutions will attempt to advocate for their student survivors—the rights of both the complainants and respondents have become precarious. For clarity, student survivors are referred to as complainants, and accused students are referred to as respondents.

In 2011, the Obama administration brought clear and more informed practices to colleges and universities across the nation in response to sexual misconduct cases (Harris & Kelderman, 2017). Marked as the new era of strict enforcement, these guidelines outlined the obligation to take immediate action in the event of a reported sexual misconduct case (Department of Education, Office for Civil Rights, 2011). Consequently, those in support of strengthening Title IX argue that the rescinding of these guidelines strip survivors

of their voice, favor the accused, and ultimately raise more questions than answers (Brown, 2017). Additionally, institutions are left to interpret the law and decide which standard works best for their given institution, leaving these cases open for variability. With the flexibility to handle these reports, institutions may be more likely to sweep cases under the rug, making survivors of sexual assault less comfortable reporting incidents as they arise (Brown, 2017). Brown highlights, “Nationally it will be confusing, and it will result in students’ having different protections at different schools” (Brown, 2017). Incidents involving sexual misconduct thus deserve strong, clear and efficient guidelines.

Inversely, for those in support of the rollback, having more options to conduct an investigation and various routes for resolving cases of sexual misconduct is not necessarily adverse. Administrators can shape their investigations to model the conditions and students involved in the most appropriate manner (Harris & Kelderman, 2017). Relieving staff of the pressures of time-constraint, the new interim measures state, “There is no fixed time frame under which a school must complete a Title IX investigation” (Department of Education,

Office for Civil Rights, 2017). Making it a priority to advocate a fair, just, and equitable process is important for both the complainants and respondents. As mandated reporters, professionals must focus on protecting free speech to ensure that the respondent’s due process is not undermined (Harris & Kelderman, 2017). These new measures ultimately give respondents increased clarity and opportunity for their voices to be heard throughout their investigation.

While there are many avenues that institutions can implement with the new, interim measures, its ambiguity only disfavors the complainants. Furthermore, the compassion, fragility, and integrity surrounding Title IX has been disrupted. By gradually shifting the focus and protection onto the respondents, mandated reporters inherently perpetuate fear in the lives of survivors who depend on institutions to handle Title IX cases appropriately. It is important to recognize that universities have a significant role in remedying conditions that elicit sexual misconduct cases (Ellman-Golan, 2017). Therefore, professionals must continue to support student survivors and strengthen Title IX, not scale it down.

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