

FAQs: New Title IX Regulations as Required by the Department of Education

Effective August 14, 2020

Who are our mandatory reporters now?

These persons who reside in supervisory capacities are considered mandatory reporters. Those include: Deans, the Chancellor, vice chancellors, department chairs, all faculty members, any employee at the university police department, and any employee in athletics, Greek life, student activities, student conduct, or human resources. There are no changes to Arkansas State University's mandatory reporter policy as a result of the new Title IX regulations.

Is the University changing their definitions?

Yes, we will incorporate the mandatory definitions from the new Title IX regulations, including the definitional change made to sexual harassment. The additional categories under Title IX which may be investigated are sexual assault, dating violence, domestic violence, and stalking. All of these categories, including sexual harassment, are forms of sexual discrimination as recognized under Title IX. We do not intend to change definitions that are not required by law to be changed.

Will the University still address Sexual Harassment outside of the Title IX jurisdiction (study abroad, private locations off campus, non-affiliated parties of the University, etc.)?

Yes, involved parties will have the opportunity to file a formal complaint and have that complaint reviewed by either the Office of Student Conduct or Human Resources, whichever campus resource is applicable. This will be a separate process outside of Title IX. This option will be afforded to all complaints which are dismissed under Title IX for failing to meet the jurisdictional requirements set forth in the new regulations.

What evidentiary standard will the University use?

We currently use the preponderance of the evidence standard in evaluating Title IX claims (which is the standard used throughout Arkansas law in state agency administrative matters, for instance).

How will the University's timeline change on investigations? Will we keep 45 calendar days?

The University has adjusted its timeline to conclude investigations within 45 *business* days. We have discretion to set it at any timeline we so choose. We have always opted to have a timeline sooner than what was required of us. For instance, a previous guideline was 60 days. At that time we chose 45 calendar days. Based on feedback from the Title IX practitioners within the ASU System and in conjunction with the new regulations, we have amended this to 45 business days.

Will the University still offer supportive measures and resources to involved parties who experience sexual harassment no longer covered under the new jurisdictional requirements of Title IX?

Yes – involved parties affiliated with the University whose complaints are dismissed under the Title IX grievance procedure due to failure to meet jurisdictional requirements will still be afforded access and provided information for both on campus and off campus resources.

Will the University still be able to provide anonymity to involved parties?

No – we can no longer provide anonymity to any involved party (reporting party, witness, Complainant, Respondent). However, we will continue to afford confidentiality, to the greatest extent allowed by law, to all parties.

What does it mean that involved parties can use informal resolutions (example: restorative justice /mediation) in sexual assault cases, or any other type of Title IX case?

In the cases where it is allowed, informal resolution can only be considered if both the Complainant and Respondent agree to participate, and only after a full and impartial investigation has been conducted. No one can or will force a party into an informal resolution and if at any time either party determines they want to go back to the formal investigation process, they can. The University cannot facilitate an informal resolution without that written agreement between both parties. Regardless of the type of Title IX allegation, the University cannot utilize an informal resolution where the Complainant is a student and the Respondent is an employee (faculty/staff). We currently offer informal resolution. That will continue.

Is participation still optional in the Title IX process?

Yes – participation is optional for all involved parties and participants in the Title IX process.

Are involved parties permitted to have an advisor during the Title IX process, including the live hearing?

Yes – we have always recognized and will continue to recognize the right for any involved party to have an advisor of their choosing in any portion of the Title IX grievance procedure. In the investigation stage prior to the live hearing, an advisor may not speak for an involved party and the right to use an advisor is optional. The new regulations require that during the live hearing, the Complainant and Respondent must have an advisor. . If either party does not have an advisor, the University must provide one. The Office of Title IX and Institutional Equity will provide a list of trained advisors to all participants which may be utilized at any time during the Title IX grievance procedure.