



# ACHA Comments: 2024 Title IX Sexual Harassment Final Rule Overview

RIN: 1870-AA16

## Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance Implementation Statement

### Introduction

The American College Health Association (ACHA) extends its gratitude to the Office of Information and Regulatory Affairs within the US Office of Management and Budget (OMB) for its regulatory review of the US Department of Education's (ED) proposed Final Rule for Title IX. As an organization primarily concerned with advancing the health and well-being of college students across the country, we view the Federal Administration's actions as a proper initiative to ensure equality of opportunity for all students, regardless of gender.

As indicated by data from ACHA's National College Health Assessment, the time for action is now. The assessment gathered data from 78,024 respondents from various colleges and universities around the country. A total of 2.2 percent of participants reported that they had experienced an attempt at sexual penetration without their consent. Transgender/gender-nonconforming participants also reported they experienced sexual touching without consent at a higher rate than their cis-gender peers.<sup>1</sup> Information and data such as this indicate the need for proper implementation of Title IX regulations that ensure the safety and well-being of all students.

To ensure the well-being of students, faculty, and staff, ACHA believes that the Title IX regulations should:

1. Successfully reduce sexual-based harassment and effectively redress victims;
2. Provide clear and accessible guidance on adequate training for administrators;
3. Include and address gender-based harassment as part of sex-based harassment.

We hope the OMB and the ED will consider these comments as suggestions and as feedback for ensuring well-being through its considerations and regulatory review of the proposed Title IX regulations.

### Request for clarity in Title IX implementation and compliance

We request that the Final Title IX Rule should have the objective of being clear and thorough to avoid unnecessary confusion in its implementation. Above all, the Final Rule should place the well-being and safety of college students at the center of any protocols and requirements. Through clarity and guidance, the Final Rule should avoid unnecessary confusion and potentially harmful impacts by overburdening college staff, thereby

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<sup>1</sup> American College Health Association. American College Health Association-National College Health Assessment III: Reference Group Executive Summary Spring 2023. Silver Spring, MD: American College Health Association; 2023.

leaving students unable to properly attain Title IX protections.

To ensure the well-being and safety of students, we highly encourage the Final Rule to be published with guidance and best practices documentation for implementation clarity. While the ACHA membership will comply with proposed requirements and implementation protocols, we urge the ED and the OMB to maintain the focus on the rule on the well-being and health of impacted students.

### **Potential and ongoing issues for Title IX regulatory implementation consideration**

Below, we provide some points of consideration to ensure the well-being of potentially impacted students. We hope that the OMB and the ED consider these suggestions as potential practices to protect the well-being of students utilizing Title IX protocols and protections.

**Live Hearings** – The live hearing protocols for Title IX hearings cannot be used in a similar manner to a judicial procedure. The equity judicial standard for this process creates harm through uneven prioritization of procedural completion when the focus should be on supporting the mental health and well-being of victims. Allowing live hearings to be set as a judicial process similar to legal battles/courts creates an uneven balance power dynamic between students since counsel and representation are authorized. Therefore, while one of the parties may be able to obtain representation as an attorney, another party may not due to financial hardship or other circumstances. Furthermore, we believe the establishment of a court-adjacent system to deal with delicate issues and topics discussed during live hearings creates an adversarial tone. **For these reasons, we suggest the OMB and the ED consider Title IX live hearings procedures as an opportunity to find better campus climate solutions.** Such actions would better serve to ensure the well-being of students.

**Compliance adherence prioritization over student well-being** – Current Title IX regulations stress regulatory compliance and adherence by Title IX Coordinators. Title IX Coordinators operate with limited resources and are required to multi-task several ongoing issues within Title IX implementation. For these reasons, only stressing compliance may cause neglect when it comes to other Title IX Coordinator responsibilities, including primary and secondary prevention. Although compliance with rules is necessary, stressing only the adherence to the rules impacts the work of Title IX Coordinators who may be focused on ensuring compliance rather than ensuring the well-being of impacted students. **Therefore, ACHA recommends that the Final Rule prioritize the well-being of students rather than solely be in compliance with requirements and regulations.** Well-being prioritization may include the provision of well-being resources by Title IX Coordinators to impacted students.

**Mandated reporting under Title IX** – The current requirements for mandated reporting for Title IX present several issues for the well-being of students and the management of Title IX on college campuses. Current practices can erode trust between faculty, staff, and impacted students through mandating the reporting of delicate issues stated in confidence. Furthermore, the current mandated reporting practices cater towards compliance rather than supporting students' well-being and safety.

Several ACHA members have expressed concern that impacted students, who had just experienced trauma, were concerned about completing and fulfilling mandated reporting requirements rather than focusing on their mental health. **As a solution, ACHA recommends that the Title IX regulations amend mandatory reporting requirements to better focus on the well-being and safety of the students who are reporting instances of sexual assault or trauma.** The mandated reporting should be based on and subject to the consent of the student. ACHA emphasizes that victims/impacted students should focus on their own well-being, so reporting and starting a process that can impact their trust and the guarantee of confidentiality may not necessarily be the right place to start. Instead of focusing on requiring reporting, staff and faculty may provide resources and guidance to victims/impacted students so that they can decide how to best proceed.

**Restorative justice** – Title IX regulations should prioritize restorative justice or practices. Under this emerging field of thought, acts or prevention can be developed to counteract instances of harassment or discrimination. The goal

of restorative justice or practice should be to eliminate future instances of harassment, rather than focusing on retribution or compliance adherence.

## Conclusion

To ensure the well-being and safety of students, Title IX regulations should prioritize the health and mental well-being of impacted students/victims rather than just reporting compliance adherence. The

focus of these regulations should be on evidence-based prevention and restorative practices, not solely retribution or task management. Therefore, to ensure these actions, the OMB and the ED should

consider issuing guidance along with the publishing of the Final Rule for Title IX. We thank you for your agencies' due diligence in their regulatory review of Title IX.

## About the American College Health Association

Since 1920, ACHA has served as the voice for college student health and wellness. Through advocacy, research, and education, ACHA stands at the forefront of issues that impact the health and wellness of our college students. ACHA membership includes:

- **Over 800 member institutions**, including four-year public and private universities, community colleges, minority-serving institutions, faith-based institutions, and schools in U.S. territories and Canada.
- **Over 11,000 health, wellness, and higher education individual professionals**, such as physicians, physician assistants, administrators, nurses, nurse practitioners, nurse directors, mental health professionals, health educators, dietitians and nutritionists, pharmacists, and faculty, serve as individual ACHA members.
- **Sustaining members**, such as corporations and nonprofit organizations interested in being more connected with the college field.

For more information, please visit [acha.org](http://acha.org).



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