

STALKING AND TITLE IX: THE BASICS

What is Title IX?

From elementary schools to higher education, Title IX prohibits any school that receives federal funding from discrimination on the basis of sex and requires schools to respond to and remedy hostile educational environments. Violating these mean a school could lose its federal funding or be sued by the student whose rights under Title IX were violated.

Title IX of the Education Amendments of 1972:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

Supreme Court decisions and guidance from the U.S. Department of Education have further explained what Title IX means and what it covers. A school's Title IX responsibilities represent the floor, not the ceiling, of actions that schools can take to support victims.

Do schools have an obligation to protect their students from stalking under Title IX?

Title IX calls discrimination on the basis of sex “sexual harassment,” with a slightly different meaning than you might think. It defines “sexual harassment” as unwelcome sexual or other conduct on the basis of sex, including a single instance of sexual assault, dating violence, domestic violence, or stalking.¹

New regulations announced by the Department of Education (DOE) in August 2020 specifically added stalking to the definition of sexual harassment.² Prior to these new rules, Title IX did not explicitly recognize stalking as a form of sexual harassment.³ Unlike the informal guidance they replaced,⁴ the new Title IX regulations underwent a formal rulemaking process. This means that schools—at a minimum—are obligated to implement policies and procedures that adhere to the new regulations. The DOE will consult and apply the new regulations when determining whether a school violated Title IX or if a student's rights under Title IX were protected by their school.

How does Title IX define stalking?

Title IX regulations define stalking as “[e]ngaging in a course of conduct directed at a specific person that would cause a reasonable person to — (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.”⁵

The regulations don't specifically define what “course of conduct” means, but in other federal regulations and many state jurisdictions, “course of conduct” is defined as two or more acts.⁶ Individual acts could include following or spying on a victim; repeatedly calling, texting, and/or messaging; sending unwanted letters or gifts; tracking or waiting for a victim; damaging property; spreading rumors; posting private information or photos online; impersonating a victim; hacking into accounts; and assaulting or threatening a victim or someone close to them. This pattern of behavior has to either make the victim feel—or would make a reasonable person feel—fear for their own safety or the safety of others, or substantial emotional distress. “Substantial emotional distress” is undefined in the Title IX regulations, but other federal regulations define it as “significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.”⁷ While state definitions vary widely and in some cases are not well-defined, some courts have analyzed the definition's meaning.⁸

People react to stalkers in a variety of ways. Some may seem irritated or angry rather than scared, while others may minimize and dismiss their stalking as “no big deal.” Irritation, anger, and/or minimization may be masking fear. It is helpful to consider how victims may change their behaviors to cope with the stalking. Are they changing travel routes? Avoiding certain locations? Screening calls? These may be indicators that victims are afraid.

Does Title IX only cover students?

Title IX covers discrimination experienced or perpetrated by students, employees, or third parties while they are enrolled or employed by the school. Schools must also address hostile educational environments created by sex discrimination, meaning that they must remedy any given situation as well as address its effects and prevent it from happening again. Schools often meet this requirement through public education and awareness programs on everything included under the broad Title IX definition of sexual harassment.

If stalking occurs off campus, can it still fall under Title IX regulations?

If at least part of the stalking occurs in the school’s “education program or activity,”⁹ it falls under Title IX. This includes the formal campus of a school and activities happening on it as well as activities that occur off-campus in buildings owned and controlled by recognized student organizations, like fraternities and sororities.¹⁰ It can also include off-campus school activities, such as athletic events.¹¹

For example, if a student assaults, threatens, or follows another student while they are off campus in a private residence and then harasses that same student again on campus, the two incidents create a course of conduct that falls under Title IX.

This is only one example of mixed on- and off-campus stalking conduct that could trigger Title IX; investigators should review each report of stalking conduct thoroughly to ensure they do not ignore an event that appears to have occurred outside a school’s education program or activity.

If stalking occurs online, can it still fall under Title IX regulations?

For online stalking to fall under Title IX regulations, it has to occur as part of an “educational program or activity” and that requires an investigation. It probably counts if the stalking occurs over “the computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of” the school, or if a student uses a personal device to perpetrate online harassment during class time.¹² Title IX regulations specifically recognize online harassment, which the Department of Education colloquially refers to as “cyberstalking.”¹³

Does the intent of the accused stalker matter?

Title IX defines stalking by how it affects the victim or a reasonable person, not the intent of the stalker.

Stalking behavior among some students with Autism Spectrum Disorders (ASDs) is a concern for both for the victim being stalked as well as the student with ASDs. Reports of stalking as violations of Title IX if committed by student with ASDs, or other disabilities, require specialized and intentional interventions that include input from experts on disability as well as those knowledgeable about stalking and gender-based violence.

Can schools prohibit stalking behavior beyond Title IX regulations?

Title IX represents the minimum threshold that schools must adhere to. Schools can establish their own policies, disciplinary codes, and support programs that go beyond the minimum required by Title IX, choosing to address all stalking conduct that affect their communities, whether perpetrated on or off campus, within a campus program or not, or in-person or online.

What else can schools do to support stalking survivors?

Stalking is a crime under the laws of the 50 states, District of Columbia, U.S. Territories, Uniform Code of Military Justice, and Federal government, as well as many tribal codes.¹⁴ Schools should ensure students know they have the option to report any stalking conduct to law enforcement, which has jurisdiction over crimes committed both on and off campus. Schools should also ensure students know they can apply for a civil protection order, and provide students with contact information for and resources explaining both the criminal and civil legal systems.

Schools can also refer students to community advocacy services that may be available off campus. These organizations can help stalking survivors pursue avenues to promote their safety and healing, including but not limited to counseling, medical advocacy, crisis intervention, shelter, and civil legal remedies.

How quickly do schools have to respond to a complaint of sex discrimination?

Title IX regulations require schools to be “prompt” when responding to a Title IX complaint but do not quantify how long that is. Similarly, while a school may accommodate a police investigation by delaying its response, such an investigation does not negate a school’s responsibility and any unreasonable delay in its response is a violation of Title IX. If a school’s response to a Title IX complaint impedes the victim’s access to education and further creates a hostile environment, they may have grounds for a complaint to Department of Education.

Now that you know the basics of a school’s obligations to protect students from stalking under Title IX, think about what your school does to address and respond to stalking. Use SPARC resources to analyze your school’s response, support victims, hold stalkers accountable, and spread awareness and understanding about the crime of stalking.

- Analyze response:
 - [Addressing Stalking: A Checklist for Campus Professionals](#)
 - [Responding to Stalking: Quick Tips for Campus Professionals](#)
 - [Responding to Stalking: Quick Tips for Law Enforcement](#)
 - [Responding to Stalking: Quick Tips for Victim Service Providers](#)
 - [Responding to Stalking: A Guide for Advocates](#)
 - [Tips for Stalking Investigations and Hearings](#)
- Support victims:
 - [Safety Planning Strategies for Stalking Victims](#)
 - [Stalking Incident and Behavior Log for College Students](#)
 - [Supporting Victims of Stalking: Quick Tips for Friends/Loved Ones](#)
 - [Understanding Stalking on Campus Brochure](#)
- Learn and share information about stalking:
 - [Media normalization of stalking materials](#)
 - [National Stalking Awareness Month materials](#)
 - [Stalking fact sheets and infographics](#)
 - [Stalking informational videos](#)
 - [Stalking on Campus Public Awareness Workshop materials](#)
 - [Talking Stalking: Tips for Campus Public Awareness Campaigns](#)
 - [Talking Stalking: Tips for Prevention/Awareness Educators](#)
 - [Webinar recordings](#)

ENDNOTES

¹ 34 C.F.R. §106.30

² Agencies must follow an open public process when they issue regulations and may not exceed their statutory authority or violate the constitution. For an explanation of the official rulemaking process, see A Guide to the RuleMaking Process available at https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf.

³ For a helpful broad overview of the changes made by the new regulations, see R. SHEP MELNICK, ANALYZING THE DEPARTMENT OF EDUCATION'S FINAL TITLE IX RULES ON SEXUAL MISCONDUCT (June 11, 2020), <https://www.brookings.edu/research/analyzing-the-department-of-educations-final-title-ix-rules-on-sexual-misconduct/>.

⁴ In 2011, The Obama administration released Title IX Guidelines, colloquially known as the "Dear Colleague Letter." See Dep't of Educ., Off. of the Assistant Secretary, Dear Colleague Letter (April 4, 2011). Because the guidelines never underwent the formal rulemaking process, schools receiving federal financial assistance were not bound by them. The Dear Colleague Letter has been formally rescinded by the DOE.

⁵ 34 U.S.C. § 12291(30).

⁶ See, e.g., 34 C.F.R. § 668.46; Ark. Code Ann. § 5-71-229(f)(1)(A); Cal. Penal Code § 646.9(f); Conn. Gen. Stat. § 53a-181d(a); 720 Ill. Comp. Stat. Ann. 5/12-7.3(c)(1); Kan. Stat. Ann. § 21-5427(f)(1); Mich. Comp. Laws Ann. § 750.411h; N.H. Rev. Stat. Ann. § 633:3(a)(II)(a); Tenn. Code Ann. § 39-17-315(a)(1); Utah Code Ann. § 76-5-106.5(1)(a). It is important to note, however, that some jurisdictions define "course of conduct" differently — for example, Delaware defines it as three or more separate incidents, see 11 Del. Code § 1312(e)(1), while Florida defines it as a "pattern of conduct," see Fla. Stat. § 784.048(1)(b).

⁷ 34 C.F.R. § 668.46.

⁸ For instance, in determining whether conduct has constituted "substantial emotional distress," the Missouri Court of Appeals has looked to the Restatement (Second) of Torts § 46. In *Wallace v. Van Pelt*, the Court used definitions cited in the Restatement to define "emotional distress" as an ongoing feeling of mental anguish, which could include feelings such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. 969 S.W.2d 380, 386 (Mo. Ct. App. 1998). In order to be "substantial" the emotional distress must be of a "significantly higher level" than the distress "routinely experienced in daily life" but which "not need to be so severe to be uneducable by the average person." *Id.* Title IX investigators seeking further clarification on Title IX's definition of "substantial emotional distress" should consult with local specialized attorneys or prosecutors, or call AEquitas at 202-558-0040.

⁹ 34 C.F.R. § 106.31.

¹⁰ *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Assistance*, 85 F.R. 30026, 30197-30200.

¹¹ *Id.*

¹² 85 F.R. at 30202.

¹³ 85 F.R. at 30202 and U.S. Dep't of Educ., *OCR Webinar on New Title IX Protections Against Sexual Assault*, YOUTUBE (July 7, 2020) (beginning at 5:46 mark), <https://www.youtube.com/watch?v=i-BCnhUsJ4s&feature=youtu.be>.

¹⁴ Arrest and charging decisions are guided by applying the relevant state criminal statutes, not Title IX definitions, to the facts reported.