

What you need to know about the new 2020 Title IX Regulations

1. What is Title IX?

Title IX of the Education Amendments of 1972 is a federal law prohibiting sexual discrimination in all areas of education. Title IX ensures gender equity in all institutional programs, events, activities, and operations involving employees, students, third parties (contractors), and visitors. Title IX applies to sexual harassment/discrimination (including sexual assault), relationship violence such as dating/domestic violence, and stalking. As a public institution of higher education that receives federal funds, the Central Arizona College (CAC) is bound under this law.

2. What is the big deal about these changes?

The last substantive change to the Title IX regulations were made in 1975, so these changes were unprecedented. These regulatory changes issued on May 6, 2020, are enforceable and will carry the full force and effect of law as of August 14, 2020. The regulatory changes are significant, very prescriptive and due process heavy. These new regulations also preempt state law and negotiated contracts. All in all, it is a pretty big deal! Here are some of the most relevant changes in the new regulations:

3. The definition of sexual harassment has changed.

Under the new regulations, sexual harassment is defined as “conduct on the basis of sex” that meets one of the following conditions:

1. A CAC employee conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct (quid pro quo);
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a CAC educational program or activity (typically considered hostile environment); or
3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

b. The definition of “program or activity” has been clarified.

CAC must have “control” of the respondent and the context of the harassment/discrimination/assault. This means that the incident being reported must have occurred in a program or activity of the institution over which CAC has control. The new regulations expand off-campus jurisdiction to buildings and property owned/controlled by recognized student organizations. Another clarification is that the complainant must be a member or must be seeking admission to the institution (applicants). The regulations often refer exclusively to “students,” but employees are also protected and held responsible under these standards.

c. The statutory verbiage “in the United States” has been clarified.

The Title IX statute applies to persons in the United States, with respect to educational programs or activities that receive federal financial assistance. Under the new regulations, CAC must respond when sexual harassment occurs in the District’s educational programs or activities against a person in the

United States. CAC may still address prohibited sexual harassment/discrimination that occurs outside of the United States (i.e., study abroad) through its code of conduct and/or employee policies.

d. The idea of due process has been expanded.

Revision of grievance and resolution of controversy processes may be necessary to incorporate the responsibilities/protections under the new Title IX regulations. The regulations extend significant due process protections for at-will employees accused of misconduct. There is now more due process for sexual discrimination/harassment than other forms of discrimination because Title IX includes provisions requiring more substantive written notice to the respondent regarding the nature of the allegations. There is also a right of the parties to review investigation materials prior to a final determination being made, and there is now the right to a written rationale for the outcome and any sanctions assigned under this policy.

4. What does actual knowledge mean and why is it important to understand?

The new Title IX regulations do not require there be a Title IX investigation unless the institution receives “actual knowledge” through a formal complaint of sexual harassment (as defined in the Title IX regulations, see 2(a) above). Actual notice means a written and signed complaint of sexual harassment to the Title IX Coordinator or to an Official with Authority (OWA) who has been designated by CAC to implement corrective measures under Title IX. *Not all employees are designated as OWAs.* It is important to understand the idea of actual knowledge because the regulations do not require CAC to initiate the Title IX investigative process for complaints (or an informal resolution process if agreed to by both parties) or supportive measures under Title IX) for which it has not been afforded actual knowledge.

5. Are all employees still mandatory reporters?

No. Mandated Reporter (or mandatory reporter) means a CAC employee who is obligated by policy to share knowledge, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator. Under the new regulations, CAC may designate mandated reporters, but it is not required to. CAC has designated the following employees as mandatory reporters, which means they are obligated under the law to report any knowledge of or reports of sexual harassment, discrimination, dating/domestic violence, or stalking to the Title IX Coordinator.

Central Arizona College has classified all employees, but for the exception of the Ombudsman as Mandated Reporters of any knowledge they have that a member of the college community is experiencing harassment, discrimination, and/or retaliation.

6. What is the difference between an OWA and a Mandatory Reporter?

Initiating the Title IX investigatory process is required when CAC has actual knowledge of an alleged occurrence of sexual harassment, discrimination, and/or retaliatory conduct. This actual knowledge can only be triggered when either the Title IX Coordinator or an OWA is notified of a complaint or has knowledge of conduct that may violate Title IX. This is the difference between an OWA and a mandatory reporter.

Mandatory reporters are required UNDER CAC POLICY to report knowledge of and conduct that may violate Title IX to the Title IX Coordinator, but their knowledge of such conduct DOES NOT

TRIGGER CAC's responsibility to initiate the Title IX investigatory process as outlined in the Title IX Regulations. Failure on the part of a mandatory reporter to report triggers discipline under a policy violation, while failure on the part of an OWA to report may trigger institutional liability under federal law.

OFFICIALS WITH AUTHORITY

Central Arizona College has determined that the following administrators are Officials with Authority to address and correct sexual harassment and/or retaliation. In addition to the Title IX Team members, these Officials with Authority listed below may also accept notice or complaints on behalf of Central Arizona College.

Title IX Coordinator
College President
College Vice Presidents
College Deans
Executive Directors
Law enforcement
Athletic Director

7. What's this about a live hearing with direct and cross-examination?

The live hearing with cross-examinations is the most controversial provision of the new rules. The new regulations mandate live hearings where the parties must be able to clearly hear and see the other party. In these hearings, parties and witnesses must attend and submit to live, advisor-led cross-examinations. A hearing decision-maker will make determinations of relevance of evidence and questions in real-time, during the hearing. At CAC, live hearings will always be held virtually, with the parties (complainant and respondent) in separate rooms.

8. What does it mean to have an Advisor?

Each party to a Title IX complaint (complainant and respondent) is entitled to an Advisor of their choosing under the new Title IX regulations. An Advisor is defined as a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process (including investigatory meetings), to advise the party on that process, and to conduct cross-examination for the party at the hearing. An Advisor can be an attorney, if a party so chooses. CAC has a list of trained Advisors who are ready to serve, if selected by a party.

9. Where can I report incidents of sexual harassment/discrimination/dating violence/domestic violence and stalking?

Incidents may be reported directly to the Title IX Coordinator, Barrington Campbell, at the Signal Peak Campus, room O-200B, via email: titleix@centralaz.edu, or by phone: 520-494-6456/520-494-5067. Anonymous reports may also be made through the following website: https://cm.maxient.com/reportingform.php?CentralAZCollege&layout_id=40

No sex discrimination. No sexual assault. *Period.*

