

# OCR Issues New Title IX Guidance

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Nearly a year after the implementation of the 2020 Title IX amended regulations, the U.S. Department of Education's Office for Civil Rights (OCR) has released "Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021)." The Q&A provides clarifications about the 2020 amendments as well as an appendix with sample policy language. This guidance will undoubtedly assist schools as they refine their written policies for the upcoming school year.

The key takeaway from the Q&A is that the 2020 amendments operate as a floor - representing the "minimum steps that a school must take in response to notice of alleged sexual harassment." The Q&A clarifies that schools may take additional measures to protect against sexual harassment so long as those measures do not conflict with the 2020 amendments. This is true even if the misconduct at issue does not meet the definition of "sexual harassment" provided by the 2020 amendments.

To that end, the Q&A suggests that schools consider a number of additional optional measures that may provide students with greater protections and ensure that complaints are resolved expeditiously. For example, while the 2020 amendments do not provide a prescribed time period, the Q&A suggests that schools determine their own reasonably prompt time frames for concluding the grievance process. Previous OCR guidance suggested a 60-day time frame for resolving sexual harassment complaints excluding any subsequent appeals. Likewise, the Q&A also raises the possibility of schools putting rules of decorum in place for conducting live hearings. If implemented, any such rules must apply equally to all parties.

Another optional measure discussed in the Q&A is an informal resolution process. The 2020 amendments allowed for, but did not require, schools to adopt an informal resolution process that parties could voluntarily engage in to resolve disputes. However, the term "informal process" has never been defined by OCR, leaving many schools unsure about what such a process would look like in practice. The Q&A explains that because the term is undefined, schools are allowed "the discretion to adopt whatever process best serves the needs of its community." Helpfully, the Q&A points readers to its appendix at section XV, which provides model policy language that may assist schools in crafting their own informal resolution policies.

Title IX coordinators should review this guidance with an eye toward revamping their Title IX policies for the upcoming year. Schools should consider adopting an informal resolution process that serves the needs of their community.