To: The Caltech Community  
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Subject: Title IX Regulations FAQ

The Equity and Title IX group has spent a great deal of time reviewing the new Title IX regulations, released on May 6, in order to provide the Caltech community with concise and clear information about how important aspects of the new regulations impact our efforts to promote a safe and inclusive environment for all members. We have truly appreciated the interest many of you, particularly our students, have taken in this event, as well as your patience and understanding in allowing us time to review the regulations and address your questions. We will continue to assess the regulations, discuss impacts and options with peer institutions, and communicate with you about policy and procedural changes Caltech makes to implement these new regulations in a way that promotes your safety and inclusion. Please direct further questions to our team at titleix@caltech.edu.

Q1: When will Caltech adopt the new regulations?
A: The regulations go into effect on August 14, 2020. Caltech will put the changes into effect at that time.

Q2: What does the new definition of “sexual harassment” mean for the Caltech community? Is this the only misconduct that Caltech can address from now on?
A: The final regulations do two key things:

First, they establish sexual harassment as a form of sex discrimination covered under Title IX, and they define sexual harassment as conduct on the basis of sex that satisfies one or more of the following:

1. A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); or
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity; or
3. Sexual assault (which includes (i) a broad definition of rape, (ii) statutory rape, and (iii) fondling, the non-consensual touching of another’s private body parts for the purpose of sexual gratification), dating violence, domestic violence, or stalking, all as defined in the Clery Act/Violence Against Women Act.
This new definition of sexual harassment leaves in place Title IX’s coverage of non-sexual harassment forms of discrimination on the basis of sex, such as discrimination on the basis of sex in athletics.

The new regulations, moreover, expressly allow Caltech to continue to address misconduct now falling outside of Title IX coverage in any manner it deems appropriate, including by offering support and imposing discipline. Caltech can and will continue to protect all of its community members under its policies, regardless of gender, gender identify, gender expression, and sexual orientation. In short, allegations of misconduct that fall outside the scope of Title IX may still establish a violation of Caltech policy and result in discipline; they simply would not establish a violation of Title IX.

**Second**, as discussed below in Question & Answer #4, the new regulations prescribe a specific grievance process for the adjudication of allegations of misconduct that fall within the new definition of sexual harassment.

**Q3: In what other ways do the new regulations change the scope of misconduct covered as sexual harassment under Title IX?**

A: There are two additional changes that narrow the scope of sexual harassment covered under Title IX:

First, the new regulations limit Title IX to cover sexual harassment occurring within an education program or activity, and against a person in the United States. Title IX does not cover, for example, misconduct meeting the definition of sexual harassment which takes place at a conference held abroad.

The term “education program or activity” refers to a situation in which Caltech exercises substantial control, as well as buildings owned or controlled by officially recognized student organizations (e.g., club houses, fraternity houses). So, for example, under the new regulations, Title IX would qualify misconduct as sexual harassment if it were to occur on a Caltech class field trip or other Caltech-controlled event within the United States, regardless of whether Caltech owns or controls the facility. But Title IX now does not cover sexual harassment that occurs in off-campus housing that is not owned or controlled by Caltech or an officially recognized student organization and occurs outside the context of a Caltech educational program or activity. The Jet Propulsion Lab (JPL)’s education programs and activities would remain covered by Caltech’s policy against sexual harassment under Title IX.

Second, the new regulations limit who can file a formal complaint under Title IX at Caltech. At the time of filing, the individual must be participating in or attempting to participate (e.g.,
seeking academic admission or employment) in a Caltech education program or activity. This means, for example, that alumni cannot file complaints under Title IX for sexual harassment that occurred during their time at Caltech. Qualifying individuals, however, may file their complaint at any time, regardless of when the alleged Title IX sexual harassment took place, and the process for addressing the complaint will continue to conclusion even if they graduate before it is completed. For example, a doctoral student may file a complaint in their final year at Caltech alleging sexual harassment that occurred in their first year. A current employee may file a complaint as long as they are employed at Caltech.

Despite these limitations on what Title IX covers, Caltech community members and alumni should continue to report to the Equity and Title IX Office any concerns of misconduct currently covered under the Gender-Based Misconduct Policy and which occurred during their time at Caltech.

**Q4: How is the specific grievance process required by the new regulations to adjudicate allegations of sexual harassment different from Caltech’s current hearing process set out in the Gender-Based Misconduct Procedures?**

**A:** The two key changes are as follows:

First, Caltech's current investigation process, which is in compliance with California law, includes a live hearing only in certain circumstances. The new regulations, however, now require Caltech to conduct a live hearing as part of all investigations of Title IX sexual harassment.

Second, Caltech currently allows for, but does not provide, advisors to parties at the hearing. Advisors may not participate in the hearing, but may only silently observe and give their party advice outside the hearing. The Lead Investigator and the decision-maker question the parties. The new regulations, however, require Caltech to provide an advisor to each party who does not have one for the purpose of the hearing. The advisor does not need to be an attorney. Moreover, Caltech must allow each party’s advisor to ask questions directly of the opposing party. The decision-maker may exclude questions if they are irrelevant or violate rape shield protections, but must explain each decision to exclude a question. If a party refuses to undergo direct questioning by the opposing party’s advisor, the decision-maker must exclude all of that party’s statements made during the course of the investigation in assessing whether the allegations are substantiated by a preponderance of evidence. Caltech may continue to keep the parties physically separated, while enabling their virtual observance of each other’s interviews, and to prohibit them from addressing each other directly. This means that if a party refuses to have an advisor, they may not directly ask the other party questions.
Despite these added requirements, Caltech will continue to make every effort to make the entire process as safe and comfortable as possible for both parties. No one is required to participate in the Title IX grievance process and, in some circumstances, parties may be able to participate instead in a resolution process facilitated by Caltech. We encourage you to explore all of your options with the Equity and Title IX Office.

Q5: Do the new regulations still allow Caltech to put respondents on leave pending the outcome of an investigation?

A: The regulations allow Caltech to continue to impose interim suspension where Caltech determines, after a safety and risk analysis, that a respondent presents an imminent threat to physical health or safety. But, now, Caltech is required to provide the respondent notice of the removal decision and an opportunity to be heard if the respondent challenges the decision immediately following their removal.

For non-student employee respondents, Caltech may continue to impose administrative leave, paid or unpaid, at its discretion.

Q6: Do the new regulations require Caltech to change the standard of evidence applied to allegations of misconduct?

A: No. Caltech currently uses the preponderance of evidence standard for all of its misconduct proceedings (e.g., Title IX, academic and non-academic student misconduct, unlawful harassment, employee misconduct) and will continue to do so. A preponderance of evidence means that it is more likely than not that the incident occurred. Stated another way, it means that the likelihood the incident occurred is any amount over 50%.

Q7: Do the new regulations change Caltech’s appeal procedure for investigations of Title IX sexual harassment?

A: The new regulations require Caltech to allow the following additional grounds for an appeal: the Title IX coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter. Caltech will determine a process for parties to raise objections to these individuals at appropriate stages of the investigation process.

Currently, these individuals voluntarily recuse themselves from matters in which they believe they have a conflict of interest or bias. Caltech’s current investigation process also allows a party to submit, for consideration and determination by the Title IX coordinator, objections to the assigned investigator(s) if that party believes either or both investigator(s) have a conflict or cannot be impartial.
Where the Title IX coordinator accepts the objection, they replace that investigator with a deputy Title IX coordinator or other experienced investigator. Where the Title IX coordinator recuses themself from a matter, they assign their role to a deputy Title IX coordinator. Caltech will continue to maintain these protections.