Peer-On-Peer Retaliation

Title IX in Focus Series

October 29, 2026

Disclaimers

We can’t help ourselves. We’re lawyers.

- We are not giving you legal advice
- Consult with legal counsel regarding specific situations
- You will receive ADA-compliant slides for today's presentation

And another one…

Specific to the Title IX In Focus Webinar Series

- The 2020 Title IX regulations require training on several specific subjects
- While the Title IX In Focus webinar series will discuss *some* of the required subject matter, none of these one-hour webinars will cover *all* of the material required for Title IX training compliance
- Work with your TIXC to make sure that you are trained in accordance with Title IX, Clery, and any applicable state law

Can We Post These Materials?

- Yes!
- Institutions subject to Title IX are required by §106.45(b)(10)(i)D) to post materials used to train Title IX personnel on their websites.

Agenda

- Definition of Retaliation
- A Side Quest (2024 Regulations)
- Framework for Evaluation
- Hypotheticals

Statutory Basis for Retaliation Protection?

- Nope, but don't worry, Justice O'Connor has it figured out:

"When a funding recipient retaliates against a person *because* he complains of sex discrimination, this constitutes intentional 'discrimination' 'on the basis of sex,' in violation of Title IX."

Syllabus, *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167 (2005)

34 CFR 106.71 (excerpt)

- No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual:
  - For the purpose of interfering with any right or privilege secured by Title IX or this part; or
  - Because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.

A Side Quest (2024 Regulations)

- These are NOT in effect, but as a reminder, the 2024 regulations had tried to revise the retaliation prohibition to read:

> A recipient must prohibit retaliation, including peer retaliation, in its education program or activity.

The 2024 regulations went on to define "peer retaliation" as "retaliation by a student against another student."

Back to 2020 Regulations - Again

- No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual:
  - For the purpose of interfering with any right or privilege secured by Title IX or this part; or
  - Because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.

So – is peer retaliation encompassed by this definition?

Hypo #1

- Rory is a Respondent in an ongoing Title IX investigation.
- Rory is on an athletic team, but other team members are now ignoring Rory, and he is no longer invited to social events.
- Rory's friend group is no longer speaking with Rory, and when Rory approaches them in the dining hall, they move away.

Revisiting Those Regs

- No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual:
  - For the purpose of interfering with any right or privilege secured by Title IX or this part; or
  - Because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.

- So – is Rory experiencing retaliation?
- Would it matter if Rory was the Complainant or a Witness?

Concept #1

- We can’t make people be friends with you, but we can make them behave appropriately.

Hypo #2

- Ben and Jennifer are dating.
- Rumors begin to circulate that Jennifer is assaulting Ben in the relationship.
- Ben and Jennifer both come to the Title IX Office to say that it isn't true, and that the spreading of the rumor is causing problems within their friend group and when they try to attend social events together.
- They are experiencing depression and anxiety, and they are having difficulty attending classes.

- Is this rumor-spreading retaliation?
- Would your opinion change if you learned that the rumor started when Ben told a friend he was experiencing dating violence at the hands of Jennifer?

Concept #2

- We can’t keep people from telling their own stories.

Hypo #3

- J.P. was accused of engaging in sexual assault and sexual harassment, but after a hearing, was found responsible only for sexual harassment.
- Cory, the Complainant, keeps telling people that J.P. raped him.
- People that J.P. have never met have called him a rapist on Instagram, in the dining hall, and coming out of a fraternity party.
- Other people that Cory have never met keep telling Cory that he is a liar and a slut.
- Both Cory and J.P. are experiencing significant impact from the situation.
- Is Cory and/or J.P. experiencing retaliation?

Concept #3

- Retaliation is not the only tool in your toolbox.

Doe v. Univ. of Maryland College Park

- 2025 WL 2772018 (D. Maryland, Sept. 26, 2025)
- Complainant keeps calling Respondent a “rapist” even after he was exonerated, resulting in him being removed from student clubs
- Court finds this can’t be retaliation because it happened after the decision was reached, but it can be sexual harassment.
  - “On this record, a reasonable jury could conclude that Doe’s exclusion and the campaign branding him a ‘rapist’ were driven by sex-based hostility.”
  - Not conducting an investigation into Doe’s complaints about the behavior was problematic.


Retaliation?
Sexual Harassment?
Stalking?
First Amendment!
No Gag Orders!

Next Title IX In Focus Webinars

- November 19th – 1:00 ET, 12:00 CT – Title IX Litigation Update
- February 25th – 1:00 ET, 12:00 CT – Understanding Neurodivergence in Title IX Investigations
- March 25th – 1:00 ET, 12:00 CT – FERPA and Public Records Considerations in Title IX Cases
- April 29th – 1:00 ET, 12:00 CT – Sexualized Hazing and Title IX
- May 27th – 1:00 ET, 12:00 CT – Title IX Litigation Update

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Thank You

Bricker Graydon Wyatt