

**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

May 2020

**Questions and Answers for Postsecondary Institutions
Regarding the COVID-19 National Emergency**

In response to inquiries received by the Department, the Office for Civil Rights (OCR) issues the following technical assistance document to assist postsecondary institutions with meeting their obligations under Federal civil rights laws during this difficult and unprecedented time. OCR will continue to update this document as needed throughout the crisis.

05/12/2020

Question 1:

To prevent learning from coming to a halt during the COVID-19 outbreak, many postsecondary institutions are moving to virtual or online education (distance learning). Do institutions that provide distance learning still have to comply with Federal disability laws?

Answer:

Yes. The Department of Education (Department) understands that postsecondary institutions are working to move programs to a distance learning format in order to continue to serve students during a COVID-19 interruption, while seeking ways to ensure that all students have access to meaningful educational opportunities even under these difficult circumstances. Institutions must still meet the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act (Title II), and other Federal disability statutes. Postsecondary institutions should continue to educate students online even as they develop and improve their ability to meet the requirements of Federal disability law.

The Department recognizes that in this unique and ever-changing environment, these exceptional circumstances may affect how education, including accommodations for students with disabilities, are provided. Institutions should not decline to provide distance instruction out of a fear that they must first address all matters pertaining to accommodations for students with disabilities. Rather, institutions must make decisions that take into consideration the health, safety, and well-being of all their students and staff, and should take reasonable steps to address the needs of students with disabilities.

Question 2:

If postsecondary institutions are offering distance learning, what resources are they required to provide to students with disabilities in order to comply with Federal civil rights laws?

Answer:

Students with disabilities at postsecondary institutions must receive academic adjustments, auxiliary aids and services, and reasonable modifications in policies, practices, and procedures, where doing so would not impose an undue burden nor cause a fundamental alteration to the service, program, or activity. Some

academic adjustments, auxiliary aids and services, and reasonable modifications in the postsecondary context can be provided online, while some cannot. Whether an institution serves students in a brick-and-mortar or an online environment, the institution must ensure that students with disabilities have an equal opportunity to access educational programs, consistent with protecting the health and safety of the student and those providing that education to the student.

Where possible, instructors should work to accommodate students with disabilities, such as by using audio technology to read documents to students who are visually impaired. It may be appropriate to make other academic adjustments and reasonable accommodations through virtual means, such as online or telephonically.

Postsecondary students with disabilities typically work with their disability services coordinators through an interactive process to determine appropriate academic adjustments, auxiliary aids and services, and modifications.

Question 3:

For public colleges and colleges receiving Federal financial assistance from the Department that are offering distance learning, may institutions use captioning rather than sign language interpreters in order to fulfill their legal obligations to students who are deaf and hard of hearing under Title II and Section 504?

Answer:

Yes, in some circumstances. The Department understands that, during this national emergency, postsecondary institutions may not be able to provide all services in the same manner they are typically provided. While colleges must give primary consideration to the requests of the individual with a disability, if a college is able to establish that captioning provides communication that is as effective as sign language interpretation, and affords the student with a disability an equal opportunity to participate in and benefit from its service, program, or activity, then the institution may provide the captioning. This determination must be made on a case-by-case basis, involving an interactive process with the student. This process, however, may take into account the unique circumstances of this national emergency.

Question 4:

What if a postsecondary institution providing distance instruction determines it cannot offer a student with a disability a particular effective academic adjustment?

Answer:

OCR recognizes that educational institutions are straining to address the challenges of this national emergency. OCR encourages institutions to think creatively to provide alternative methods of accommodation. These types of innovative solutions may utilize new technology or other options to meet the needs of students with disabilities.

If an institution can establish that providing a particular aid or service would result in a fundamental alteration or undue burden, the institution would still be required to take other steps—steps that would not result in such an alteration or such burdens—but which would nevertheless ensure that, to the maximum

extent possible, the individual with a disability can participate in, and receive the benefits or services provided by, the institution's education program or activity.

Question 5:

If a postsecondary institution has suspended instruction or is only offering distance learning, is the institution still required to continue with their investigations of harassment complaints pending or made under Title IX of the Educational Amendments of 1972 (Title IX), Title VI of the Civil Rights Act of 1964, and other civil rights statutes?

Answer:

Yes. The Department understands that, during this national emergency, postsecondary institutions may not be able to provide services in the same manner as they typically would. Institutions may not, however, adopt a blanket policy putting all investigations or proceedings on hold until campuses resume normal operations, or a policy of refusing to accept and respond to new complaints. Instead, institutions should make a good-faith effort (and document the steps the institution took) to respond promptly and effectively to reports of discriminatory harassment (for instance, on the basis of race, sex, or disability), and to conduct fair, impartial investigations of student and employee complaints of such harassment in a reasonably timely manner, while also taking into consideration the health, safety, and well-being of all their students and staff.

Question 6:

What if an institution needs more time than usual to complete a Title IX sexual harassment investigation and adjudication due to circumstances arising from operational challenges relating to COVID-19?

Answer:

Any decision regarding the timetable of an investigation or adjudication should be made on a case-by-case basis. For example, Title IX requires institutions to adopt reasonably prompt time frames for major stages of the complaint process. There is no fixed time frame under which a school must complete a Title IX sexual harassment investigation, and [the Department's 2017 Q&A on Campus Sexual Misconduct](#) is clear that reasonableness and good faith are the key elements of compliance with Title IX. During this national emergency, institutions should not delay investigations or hearings solely on the basis that in-person interviews or hearings are cumbersome or not feasible, so long as the institution is able to comply with the requirements in 34 CFR 106.8 to resolve complaints promptly and equitably.¹ However, OCR will evaluate an institution's good-faith effort to conduct a fair, impartial investigation and adjudication in a timely manner, on a case-by-case basis that takes into account time frames that are impacted by

¹ On May 6, 2020, the Department completed a regulatory effort to enshrine protections from sexual harassment into law, and to ensure that schools provide adequate due process protections to students accused of sexual harassment who are subject to discipline. The release of the Department's final Title IX regulation includes the release of technical assistance documents and other information regarding the requirements of the new regulations, which will be in place once the final regulations are effective on August 14, 2020. OCR will also supplement this Questions & Answers (Q&A) document, as necessary, to provide updates regarding how the final Title IX regulations could apply to schools that have not resumed normal operations as of the effective date of the final regulations.

COVID-19 and reasons why delays due to this national emergency may be unavoidable in particular cases.

To be clear, institutions may not institute a blanket policy putting all investigations or disciplinary proceedings on hold until campuses resume normal operations. There may be some circumstances where Title IX investigatory methods or timetables will be impacted by social distancing or other issues raised by the current crisis. However, even where in-person interviews or hearings are not possible, institutions should use technology, as appropriate, to conduct these activities remotely, while ensuring that this is done timely, equitably, and consistent with due process protections, as discussed further in Question 7. Institutions should carefully consider confidentiality and privacy implications of electronic communications and virtual conduct of investigations and adjudications, including obligations under the Family Educational Rights and Privacy Act (FERPA). The Department refers institutions to the “[FERPA and Virtual Learning Related Resources](#)” resource list, the March 30, 2020, webinar, and related materials from the Department’s Student Privacy Policy Office (SPPO) available at <https://studentprivacy.ed.gov>.

Importantly, institutions should promptly advise all parties of any COVID-19 related delays that are anticipated in the party’s individual case, including the reasons for the delay and the estimated length of the delay. Institutions should also endeavor to notify complainants and respondents of the status of pending investigations; to notify parties of scheduled investigative interviews, meetings, and hearings in pending cases; and to notify parties of case outcomes and appeal opportunities following resolutions of complaints.

Question 7:

If an institution has suspended instruction or is only offering distance learning, may it modify its Title IX procedures for resolving complaints due to the current circumstances?

Answer:

Yes, with limitations. For instance, the COVID-19 emergency does not vitiate the requirement under 34 C.F.R. § 106.8 that an institution’s grievance procedures provide for the prompt and equitable resolution of student and employee complaints of sex discrimination. As set forth in the Department’s [2017 Q&A on Campus Sexual Misconduct](#) and the Department’s [2001 Revised Guidance on Sexual Harassment](#), this includes adequate, reliable, and impartial investigations, which provide the parties with the equal right to review and respond to evidence and the equal right to have an adviser of choice present during meetings and proceedings. However, such procedures may be implemented remotely, using technology.

If an institution’s methods for receiving student and employee complaints of sex discrimination (including sexual harassment) have changed as a result of a COVID-19 interruption, the institution should promptly notify its students and employees of such changes. For example, if contact information for the institution’s Title IX Coordinator or other similar point of contact has changed due to remote work locations, or if an institution is offering a web-based portal for reports or complaints of harassment rather than relying on in-person appointments, the institution should disseminate that information to its students and employees, including by prominently displaying current, updated information on the institution’s website.

Question 8:

Should institutions still accept harassment complaints if they are offering only distance learning?

Answer:

Yes. Institutions should still accept reports and complaints of discriminatory harassment. Institutions should respond appropriately to reports of harassment covered by Federal civil rights laws, including harassment on the basis of race, sex, or disability, alleged to occur in distance learning platforms, in a manner consistent with protecting the health, safety, and well-being of all students and staff. Institutions should continue to offer academic adjustments and supports to students who report harassment to help students restore or preserve equal access to educational opportunities, protect the safety of all parties and the institution's educational environment, and prevent discriminatory harassment.

Question 9:

How should institutions handle existing no-contact and no-communication agreements or orders between complainants and respondents?

Answer:

To the extent necessary to ensure compliance with Title IX or other Federal civil rights laws, no-contact and no-communication agreements or orders with respect to complainants and respondents should remain in effect, and institutions should continue to enforce no-contact and no-communication agreements and orders as appropriate to ensure equal educational access for complainants and respondents, and to prevent discriminatory harassment. Institutions may need to modify these orders in response to changed circumstances of the parties, and of the institution, resulting from operational adjustments relating to COVID-19.

More Information

If you have further questions for OCR, want additional information or require technical assistance, please contact the Outreach, Prevention, Education and Nondiscrimination (OPEN) Center at OPEN@ed.gov. The Department has also issued several prior documents related to COVID-19: [March 4, 2020 Letter](#) from Assistant Secretary Kenneth L. Marcus concerning reports of stereotyping, harassment, and bullying specifically related to coronavirus; [March 16, 2020 Short Webinar](#) on Online Education and Website Accessibility; [March 16, 2020 Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#); March 21, 2020 [Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities](#).

You can also learn more about OCR at www.ed.gov/OCR.