

Title IX Implementation Task Force Proposed Resolutions of Primary Issues

This document provides the current consensus view of the Implementation Task Force, however it does not attempt to provide a unanimous view. The Task Force continues to meet at least once per week (and often more) to better define these recommendations and the policy that follows.

- You may comment on these recommendations at <https://titleix.rice.edu/draft-policy-and-feedback> (this website also contains the Task Force membership, timelines, and upcoming town halls)

1. Given that the implementation Deadline is August 14, 2020, how do we engage the students in a meaningful way? How do we engage faculty and staff in a meaningful way?

The Task Force itself has representation from SA, GSA, staff, and faculty (both tenured and non-tenured). For context, it is important to know that the Department of Education released the final regulations on May 6, 2020, giving institutions a very short period of time to implement the new requirements. This period of time also happens to be over the summer and during an on-going pandemic.

Given the relatively short timeline, the Task Force realized that obtaining community feedback would look differently than previous efforts, but we want to do all we can to be both inclusive and transparent.

The Task Force is holding direct meetings with the Faculty Senate Executive Committee and student associations, as well as listening sessions with various constituencies across the community (including weekly meetings with the student leaders of STRIVE).

The Task Force is posting a draft of the policy for community review and comment (which is planned for July 15, 2020). The Title IX Coordinator and other members of the Task Force are available to speak to any university groups, or answer any questions (please email titleix@rice.edu).

2. What will be the standard of evidence that is used in Title IX matters?

The Department of Education requires that institutions apply a uniform standard of evidence for adjudication of Title IX complaints, whether those complaints involve students, staff, or faculty. Rice currently applies a preponderance of evidence standard to student and staff complaints, and a clear and convincing standard for faculty complaints where there may be severe sanctions or dismissal. The Title IX Implementation Task Force recommends that the standard for faculty, staff, and students be set at “preponderance of the evidence” for all Title IX sexual misconduct matters.

As an initial matter, the DOE’s new regulations are seen by many (or most) students, advocates and faculty as a significant and dangerous step back from the progress of the “me too” era. It is fair to say that in promulgating this regulation the DOE was primarily focused on ensuring that individuals received due process and protection from being falsely accused, but the primary focus of the University has always been and will continue to be on eliminating all forms of sexual harassment and interpersonal violence from our campus (in a way that meets the requirements of the law).

The new regulations, with the requirement of adjudication by live hearings with cross examination of the parties and witnesses, will in fact provide respondents with additional due process rights. Due to a series of procedural mandates in the new rules, we anticipate that these rules may also have a chilling effect on reporters coming forward, as individuals will not want to be subjected to what may be viewed as a lengthy and confrontational process.

The preponderance standard is already the current and longstanding standard for students and staff. Further, an overwhelming majority of our peers schools either already use or will be moving to the preponderance standard.

If Rice was to move to the stricter standard of clear and convincing evidence for students, it would mean even fewer cases are brought forward, and, in those cases that are brought, it would be much harder to find a violation even when the evidence shows it is more likely than not this violation occurred. Another issue that causes concern is that moving students to a stricter standard, now that faculty are covered by the law, would likely be viewed as a protectionism (without justification) and hostile to survivors.

The Task Force acknowledges the special status that faculty members hold, and as such feel that it is appropriate to retain a well-defined role in the grievance process for the Faculty Senate. Such a role will not be undermined by application of the preponderance standard to faculty cases.

3. How should Title IX matters be adjudicated and resolved for Faculty, Staff, and Students?

We have proposed a single policy on sexual misconduct under Title IX that treats faculty, staff, and students similarly in the adjudication and appeal of these Title IX matters, with the following important distinctions (based on law, and the principle of shared governance):

- When a student is charged with sexual misconduct that is Title IX, all related conduct matters—including unwanted sexual contact that violates The Code of Student Conduct--will be adjudicated as part of the live hearing under this policy. This is to allow a single investigation and hearing to determine responsibility for Title IX and Code of Student Conduct violations, which will also prevent having to subject the parties to multiple processes, in the event a respondent is found not responsible for a Title IX violation. This will also prevent the university from being open to claims of retaliation for initiating a second process for the same accusation/incident.
- When a faculty or staff member is charged with sexual misconduct that is Title IX, all related conduct matters may be raised at the hearing (i.e. they are not prohibited), but the hearing will only make a determination on Title IX matters.
 - Faculty and staff matters that are not Title IX will be adjudicated under other Rice policies as they are currently (e.g. Policy 830 on discrimination and harassment, or Policy 201A, the Faculty Senates procedure for sanctions). This process ensures that faculty and staff will continue to be held accountable under our current processes for committing acts of sexual harassment, even those acts that are not covered by Title IX.
 - This separation is necessary for two reasons. First, Rice has a legal duty to adjudicate these matters under the rules of Title VII of the Civil Rights Act (which allow for additional evidence, do not require a hearing, and do not mandate an appeal). Second, by limiting the hearing to adjudicating only Title IX matters, we are limiting the scope of changes to faculty procedures that must occur in this short time period.
- All faculty, staff, and students have the right to appeal a decision or sanction.
 - Additionally, when a faculty member is found in violation of Sexual Misconduct that is Title IX, the appeal is decided by the President (as it currently is). The President will then seek a recommendation on the appeal from the Faculty Senate (based on the record). There will not be a separate or second live hearing before a faculty panel in the case of faculty appeals, even when dismissal is the recommended sanction. This is to avoid subjecting the parties to multiple hearings.
 - **Important note:** This is just a proposal at this point. We are discussing this plan and other viable alternatives with Faculty Senate leadership.

4. How do we manage the informal resolution process, and how does that relate back to the Title IX process/investigation?

The Task Force recommends that we take steps to offer as many options for informal resolution as practical, but that we must ensure that participation is truly voluntary and may be withdrawn at any time by either party. Additionally, there should be strict limitations on using statements offered during the informal process in a future or concurrent formal process, including a Title IX hearing.

Informal resolution is generally not appropriate for sexual assault or violent conduct, and is prohibited where the complaint is filed by a student against a respondent who is an employee (regardless of the content of the allegation).

It is the strong opinion of the Task Force that restorative justice be offered at Rice as an option for informal resolutions in sexual misconduct matters, as well as for racial or other conduct matters. Rice is not currently able to offer this and would not be able to do so without trained personnel and resources.

5. Who will serve as the hearing officer? Will there be a panel hearing? Will the hearing officer be internal or external to Rice?

The Task Force recommends that in all cases a single hearing officer preside (and not a panel). Independent hearing officers should not be Rice employees, and must demonstrate exceptional experience and qualifications, meet Rice's standards for impartiality, for training that is trauma-informed, and for training and expertise in evaluating evidence.

6. How will Rice handle sexual misconduct matters that are not covered by Title IX, including off campus or international incidents, or conduct that does not meet the definition of sexual harassment under Title IX?

The Department of Education has made it clear that certain conduct is not covered by Title IX, including 1) sexual harassment that is not severe, pervasive, and objectively offensive, 2) conduct that is not part of the educational activities or programs of the university, and 3) conduct that occurs outside the United States. The Department has also made it clear that universities may prohibit and sanction such conduct under other policies or the Code of Student Conduct.

Rice University will continue to apply our current standards that prohibit such conduct and will adjudicate such conduct under other existing policies. Please see question 3 for how the University will handle cases where there are allegations of both Title IX and non-Title IX misconduct.

7. During live hearings, what type of representation will we provide or make available to both parties?

The Task Force recommends that the university continue to provide a resource navigator (from the staff of the The SAFE Office) to both parties to advise on the process and available supportive measures, regardless of stage in the process. This is the current process.

The law requires, at a minimum, that Rice provide each party with an "advisor" to ask questions of the opposing party and opposing witnesses in the Title IX hearing. The law also requires that each party have an advisor for the hearing. If a party does not have an advisor, Rice will appoint one for the hearing (at no cost to the party). The law allows, but does not require, the advisor to be an attorney. The law does not require that Rice provide individuals with their own individual attorney or advocate.

As a matter of equity and fairness, the Task Force recommends that the university provide the parties with a vetted list of individuals, attorneys, and community resources who have agreed to serve as advisors at no cost to the parties in this process and during hearings. The list will be provided to both parties at the beginning of a Title IX grievance (when a formal complaint is filed). Selecting an advisor from this list is optional.

Many members of the Task Force feel strongly that Rice should make an attorney advisor available to students, particularly those who may not have the ability to afford one on their own. Providing such a resource would undoubtedly serve to promote equity and fairness, and as such the Task Force recommends that the University consider viable options to be implemented as soon as practical.