

# Title IX Procedures in the Shadow of Potential Defamation Claims

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## Rising Defamation Risk in Title IX Proceedings

Increasingly, Title IX investigations serve as the foundation for subsequent litigation. A growing trend involves parties dissatisfied with the results of a Title IX grievance suing the opposing party for defamation related to allegations made during the Title IX process. This reality places colleges and universities in a difficult position: they must enforce Title IX rigorously enough to meet federal obligations while exercising restraint in how they investigate, document and communicate their conclusions. This article examines how defamation risk intersects with Title IX processes and outlines practical steps institutions can take to mitigate that risk.

### Title IX Framework and the Litigation Landscape

Title IX is a federal civil rights law that prohibits sex-based discrimination in education programs and activities receiving federal funding. To comply with Title IX and its regulatory framework, covered institutions must adopt policies governing how allegations of sex discrimination are investigated and adjudicated. Many institutions also maintain policies that govern employee and student behavior when



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Title IX does not apply. Although this article focuses on Title IX investigations, the following guidance may also apply to proceedings under these supplemental policies.

Title IX investigations and hearings increasingly function as pre-assembled evidentiary records that may be scrutinized in subsequent defamation and due process litigation. In that setting, the Title IX record is not simply about fact-finding. Statements generated throughout the process may ultimately become key exhibits for either side in the later litigation. Word choice matters. The language used in reports and communications can do more than support a responsibility finding; it can shape an

institution's—and the parties'—ability to withstand the legal challenges that follow.

### **Defamation Exposure: Claims, Elements and Defenses**

Defamation claims are most often brought by accused students or respondents who allege that false accusations have damaged their reputations. Less commonly, complainants claim that institutions mischaracterized investigative findings, or that a respondent or witness defamed them by accusing them of lying during the Title IX process. The institution has a stake in defending the integrity of its Title IX process and deterring retaliatory conduct, even if the institution is not a party to such litigation.

To prevail on a defamation claim, a plaintiff generally must establish: a false statement of fact; publication to a third party; fault (ranging from negligence to actual malice, depending on the plaintiff's status); and reputational harm. Common defenses include truth, privilege—particularly absolute or qualified privilege in educational settings—and lack of fault. Even when strong defenses exist, the cost of defending such claims can be substantial, and the prospect of litigation may itself chill reporting of allegations, particularly sexual assault allegations. Defamation lawsuits can also inflict reputational harm on institutions independent of those claims' legal merit.

### **When Institutions Face the Greatest Risk**

Institutions can take meaningful steps to mitigate these risks. A frequent misstep is failing to include sufficient procedural guardrails to support treating the institution's internal process as quasi-judicial. Institutions sometimes operate less formally to mirror general student conduct proceedings, which are often framed as educational rather than judicial. But

the more a Title IX process resembles core due process protections, the more likely statements made within such an internal procedure will be deemed absolutely privileged as statements made within a quasi-judicial proceeding and therefore unusable as the basis for later defamation claims.

Another common risk involves the use of unnecessarily definitive language in investigative reports and final decisions. The Department of Education's regulations require that the Title IX Coordinator's investigative report "fairly summarizes relevant evidence." Thus, that report should only discuss the evidence rather than purporting to state what actually occurred. Similarly, the written decision issued following a live hearing must include "findings of fact supporting the determination." Decision-makers, though, should avoid stating whether or not the alleged misconduct actually occurred. A safer approach is to link the factual findings to the applicable standard of proof and explain how those facts satisfy specific policy elements (for example, "We find that the following facts were established at the hearing by a preponderance of the evidence: x, y, z. These findings support the conclusion that the respondent violated the policy's prohibition on sexual assault.").

Overbroad dissemination of outcomes can also undermine privilege defenses. Informal communications—such as emails or off-the-record remarks—can create unnecessary exposure. Although courts often recognize a qualified privilege for internal communications, that protection can be lost if statements are made with malice or shared too broadly. Finally, procedural irregularities can compound risk by creating exposure under both Title IX and defamation law.

## Practical Steps to Mitigate Risk

A disciplined, intentional approach to investigations and communications is essential. The following best practices can help position institutions to defend against potential defamation claims:

- **Build a procedurally robust policy.** Features commonly associated with quasi-judicial proceedings—such as requiring testimony under oath, meaningful cross-examination, allowing advisers to make objections and present evidence, and a serious appeal process—can strengthen absolute-privilege arguments in later defamation litigation.
- **Use precise, measured language.** Decision-makers and hearing officers should avoid unnecessary conclusory statements. When feasible, have the parties review and agree upon undisputed facts before the hearing.
- **Frame conclusions as policy-based determinations.** Clearly articulate the relevant policy definitions and assess whether the proven conduct meets each element. Avoid presenting findings as absolute or objective “truths.”
- **Limit disclosure.** Because publication and reputational harm are core defamation elements, restrict access to investigative materials and outcomes to individuals with a legitimate need to know.
- **Train investigators, decision-makers and the Title IX coordinator.** Those involved should understand how reports and communications may be used in litigation. Familiarity with deposition and trial dynamics can help ensure that investigative materials withstand scrutiny.

## Balancing Title IX Compliance and Defamation Risk

If a defamation claim is brought against a party based on statements made during a Title IX proceeding, the institution should seriously consider intervening when appropriate. Intervention will allow the institution to demonstrate that its process is absolutely privileged and to signal that it will not be deterred from enforcing Title IX.

Title IX enforcement and defamation exposure are increasingly intertwined. Institutions that implement fair, well-documented processes, communicate with precision and restraint and avoid overstating conclusions will be best positioned to minimize legal risk on both fronts.

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