

NEW TITLE IX RULE & IMPACT ON ASIAN AMERICAN WOMEN

Published October 2020



While we recognize that sexual harassment and assault is endemic across the entire Asian American and Pacific Islander (AAPI) community, the statistics and data used for this brief only include Asian Americans. Therefore, this brief has been titled to reflect that. Below, we include recommendations so that Pacific Islanders can be included in data collection in order to expand our understanding of sexual harassment and assault to the rest of the AAPI community.

What is Title IX?

In 1972, Patsy Mink, the first Asian American woman elected to Congress, wrote this law based on her experiences of being denied admission to schools and facing employment discrimination based on her sex. It protects people from discrimination based on their sex in education and activities that receive federal funding. The Department of Education promulgated new rules related to Title IX, which went into effect on Friday, August 14, 2020 despite pending lawsuits.

How did the Department of Education change Title IX rules on sexual misconduct?

Among other things:

- The new regulations require postsecondary institutions to conduct cross examinations and live hearings to investigate sexual harassment complaints, which were discouraged under the previous rules. Live cross examination is very traumatic to survivors and because of that, discourages survivors from reporting.
- The new rules give schools the option to adopt either a lower or a higher standard of proof required to show that an incident occurred. Before, schools were required to accept a lower standard of evidence to

prove that an incident occurred, lowering the burden for a survivor to prove that a sexual assault occurred.

- Under the new rules, the situation must meet a new high level of severity before the school can take any action, such as removing the named harasser from campus.
- Additionally, schools are responsible for addressing conduct that occurs only in situations where they have “substantial control” over the person accused and the context in which the harassment occurs. This leaves open the possibility that schools will not take action related to incidents involving students and/or faculty that happen off campus or on study abroad programs.

The new regulations contain a number of other significant changes, detailed by the Brookings Institute [here](#).

Asian Americans and Pacific Islanders need Title IX protections.

The experiences and voices of AAPI survivors of sexual violence and harassment are not often examined or discussed in the discussions about Title IX. However, AAPI survivors face a number of increased barriers to obtaining the resources and support they need and limiting Title IX protections will only further harm against them.

Asian American women report higher rates of mental health issues that may be aggravated by sexual harassment and violence, as well as any subsequent investigation. Asian American survivors of sexual violence are more likely than their white counterparts to have [high levels of self-blame and suicidal ideation](#). [One study](#) found that Asian American women survivors who reported feeling that they had less control over their

recovery process were also more likely to use substances like drugs and alcohol to cope, exhibit behavioral disengagement (such as sentiments like “giving up trying to deal with it”), and blame themselves for the assault.

New Title IX regulations removed requirements for universities to provide certain services to those who experience sexual violence, such as therapy, medical care, change of living situation, or accommodations with classes. These resources are intended to serve the needs of survivors of sexual violence as they navigate the physical and mental health, as well as practical effects, of their assaults. For Asian American survivors, who already experience increased mental health concerns as a result of sexual harassment and violence, these new regulations will only further exacerbate the barriers they face in accessing what they need.

Further, AAPIs may face a number of other barriers to accessing the support they need through Title IX, such as immigration status (at times tied to their employment or educational status at a university), language barriers, and concerns about financial implications should they have to leave their work and/or education as a result of an investigation. These barriers may lead AAPI survivors to not seek out resources or face greater challenges in accessing resources.

The new rules require a higher level of proof before schools must take action. This only further discourages AAPI women not to seek resources or to make complaints. As one study demonstrated, Asian American women were [less likely to label instances of sexual and racial harassment](#) as such, despite reporting experiences that were consistent with the definitions of these types of harassment.

Notably, much of the research surrounding sexual harassment and violence does not explicitly examine the impacts on women of color, though AAPI students face a number of challenges in obtaining the protections they need. For example, AAPI women are often perceived through the

racist lens of submissiveness and hypersexuality. Stereotypes like these impact how likely they are to be believed and supported if they do report instances of sexual harassment and violence. In this way, AAPI women are doubted and challenged based on stereotypes about [both their gender and their race](#).

Although much of the recent focus on Title IX focused on Ivy League schools and colleges, the new Title IX rules apply to students in elementary, secondary, and high schools. Title IX also provides protections to students in community colleges, vocational programs, and [educational programs in prisons](#) that receive federal funding. For Asian American students, protections at community colleges is particularly important, as [5 percent of all undergraduates](#) in public, two-year community colleges are Asian (Asian students also comprise five percent of all undergraduates in public, four-year colleges and universities).

Disaggregated data is needed to understand sexual harassment and assault in broader AAPI community.

Currently, data and statistics on the incidences and experiences of sexual harassment and assault within the AAPI community are limited to Asian Americans, with scant information on Pacific Islanders. This is due to a lack of data disaggregated by ethnicity, which would reveal differences among more than 50 distinct ethnic groups. Disaggregated data is particularly important for Southeast Asian, Native Hawaiian, and Pacific Islander communities, who often face unique barriers that are invisibilized in the aggregation of data.

Similarly, data is often categorized by sex, biological identity assigned at birth, and gender identity, an individual's own perception of their gender. Data collection that provides no options beyond “male” or “female” erases the identity and experience of LGBTQ individuals who may not identify with either one, but face significantly higher rates of harassment and violence. We recommend that

in addition to asking about a person's sex, data collection must allow options for sexual orientation and gender identity that do not invisibilize LGBTQ folks and their experiences.

Per the recommendations of the [National Council of Asian Pacific Americans](#), we urge the Department of Education and all other federal agencies, when applicable, to (1) require collection of detailed race and ethnicity data by federal agencies; (2) document procedures for the collection and coding of race/ethnicity data; (3) make this information publicly available; and (4) justify any exclusion of data for the minimum categories. In addition, the Department should create a new classification of Middle Eastern or North African (MENA) and utilize detailed national origin/sub-group checkboxes, allowing respondents to provide multiple national origin identifications under every major racial or ethnic category.

In order to properly capture racialized gender-based violence, and not just harassment and assault based on sex or gender, searchable data should also have the ability to include crosstabs to easily find information on people of both a certain ethnicity and sex or gender.