

Navigating Title IX and 129-B

This decision tree is intended to help advocates navigate the complex intersection of Title IX and New York State Education Article 129-B. This document is not legal advice and no attorney/client relationship is formed. There are ten yes/no questions to help guide advocates through the process of determining whether Title IX and/or 129-B apply in a particular situation.

While advocates often use the terms victim/survivor and perpetrator in the field of sexual and interpersonal violence, Title IX and Article 129-B use different terms to identify victims/survivors and perpetrators. The Department of Education believes that “complainant” is a neutral, impartial description of a person who is an alleged victim and that the term is not meant to have negative or pejorative connotations. “Respondent” in Title IX refers to an individual who has been reported to be the perpetrator of sexual harassment. Article 129-B uses the terms “reporting individual,” “accused,” and “respondent.” Under 129-B a reporting individual encompasses the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation. Accused refers to a person accused of a violation who has not yet entered an institution’s judicial or conduct process. Respondent refers to a person accused of a violation who has entered an institution’s judicial or conduct process. In this document, we will use the terms “complainant” and “respondent” in order to remain consistent with Title IX language.

We recognize that Title IX and 129-B are complicated statutes to navigate and that this decision tree may not apply in all situations. This document is intended to capture the most foreseeable intersections of Title IX and 129-B, but it cannot cover every circumstance that may arise. For more guidance, you can refer to SUNY’s Joint Guidance on Title IX at system.suny.edu/sci/tix2020 and NYSED’s guidance on 129-B at www.nysed.gov/common/nysed/files/article-129-b-guidance.pdf.

Are the complainant or respondent affiliated with the institution or institution's community?

Yes

No

At the time of the complaint, was the complainant participating or attempting to participate in the institution's program or activity?

Yes

No

Did the incident take place in the United States?

Yes

No

Did the incident take place in the institution's program/activity? (i.e. where the institution exercised substantial control)

Yes

No

Did the incident take place in a building owned or controlled by a student organization recognized by the institution?

Yes

No

Was the official who received the report either the Title IX Coordinator or an official with the authority to institute corrective measures on behalf of the institution?

Yes

No

Is the incident Domestic Violence, Dating Violence, Stalking, or Sexual Assault?

Yes

No

Both Title IX and 129-B Apply

Note The Department asserts that it preempts state law.

Was the incident conduct on the basis of sex?

Yes

No

Was it quid pro quo harassment or severe, pervasive, and objectionably offensive such that it effectively denied equal access to the institution's education program or activity?

Yes

No

Only Title IX Applies

Neither Title IX nor 129-B Apply

Only 129-B Applies

Is the incident Domestic Violence, Dating Violence, Stalking, or Sexual Assault?

Yes

No