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THE CHRONICLE OF HIGHER EDUCATION.

# New Title IX Regulations: Making the Right Choices for Hearings



Title IX assault and harassment cases have presented many challenges to colleges and universities over the past nine years, and significant new challenges are looming.

New federal regulations released in May have led to two questions that higher-



Hon. Linda L. Miller (Ret.)

education institutions will need to address by mid-August: How should live Title IX hearings be conducted in light of the coronavirus pandemic, and who should conduct them?

## How?

Even though college campuses may still be closed, institutions have a responsibility to respond to student allegations of sexual misconduct in the meantime. Colleges will need to conduct Title IX hearings by videoconference (if they are not doing so already).

Not only does a virtual hearing allow a college to fulfill the federal mandate regarding hearings for its Title IX cases, it can also improve the flow of information between parties, which can lead to a more equitable outcome.

“Being the assigned hearing officer in multiple Title IX matters over the last year, I have found that the use of a virtual platform offers some unique opportunities for both parties and witnesses,” says Linda L. Miller, a hearing officer who joined JAMS after serving 30 years as a family law judge and a California Superior Court appellate judge. “Whether students are still on campus or reside elsewhere in the U.S. or out of the country, they have a safe space in which to participate, the full opportunity to share their narrative, the chance to consult privately with their advisors through the use of breakout rooms and the ability to communicate questions by email.”

According to Miller, there are several benefits that institutions can reap from holding virtual hearings, including having access to a larger selection of neutral hearing officers and eliminating





Lisa Jaye, Esq.

the travel costs associated with attending live hearings.

Virtual hearings “may be the future in Title IX cases,” says Lisa Jaye, a JAMS hearing officer who previously served as a mediator for the U.S. Court of Appeals for the Ninth Circuit. “The younger generation is more comfortable with a virtual process,” she adds, noting that hearing officers are still able to question parties and witnesses to assess their credibility during such hearings.

“Virtual administrative hearings are a win-win for everyone involved,” she says.

JAMS has trained its hearing officers on the technical aspects of virtual platforms such as Zoom and BlueJeans, and has provided them with methodologies to enhance their effectiveness in a virtual setting. Effective utilization of technology is one benefit that JAMS hearing officers bring to Title IX hearings.

## Who?

One of the larger changes created by the new federal regulations is that institutions will no longer be able to use the single-investigator model, in which one person both investigates claims and decides the outcome. Instead, they must provide live hearings in which the hearing officer permits cross-examination by the parties’ advisors and makes relevancy and credibility determinations throughout.

Recent court decisions have imposed additional hearing considerations on many colleges and universities. [Lawsuits filed by](#)

[students](#) against institutions for what they consider to be unfair Title IX decisions have resulted in several district court rulings mandating that institutions provide a hearing with a neutral adjudicator who has the power to independently find facts and make credibility assessments.

The above changes have resulted in a far more legalistic process, one that JAMS hearing officers are especially well suited to conduct based on their extensive experience.

For colleges and universities that do not already use JAMS hearing officers for their hearings—or those that are revising their policies to allow for hearings in order to comply with the new regulations—JAMS is the right choice to help ensure hearings are consistent with school policy and due process requirements.

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Here are some of the benefits of choosing JAMS:

- **Experience.** JAMS hearing officers have conducted Title IX hearings since the 2011 guidance was issued. The largest private provider of alternative dispute resolution (ADR) services worldwide, JAMS has been an industry leader in ADR since its founding 41 years ago. The company handles an average of 18,000 matters per year of all kinds, including those unique to higher education. All of its services are based on the company’s core values of collaboration,

collegiality, diversity, integrity and neutrality.

- **Flexibility.** JAMS neutrals have established track records of resolving matters using a variety of methods, including formal processes such as adjudications and informal means such as mediation or facilitation.
- **Cost savings.** Because JAMS is an external entity, there are no ongoing staffing costs for the functions that it provides. Costs are incurred only when services are rendered. Addressing disputes through a fair and independent process can limit litigation expense as well as lost productivity due to inexperienced individuals serving in various roles.
- **Neutrality.** Because it is not part of any higher-education institution, JAMS brings objectivity to disputes. Its neutrality reinforces principles of fairness within otherwise closed systems—ones that may be vulnerable to conflicts of interest among those employed by institutions who are involved in Title IX cases.

JAMS [Solutions](#) for Higher Education offers its higher-education clients a wide array of solutions beyond Title IX services, including the facilitation and mediation of disputes between administration and faculty, dispute resolution system design, and training for administration and faculty on dispute prevention and resolution methodologies.

