



# The New Title IX Regulations Are Cause for Concern

**Dallas attorney Michelle Simpson Tuegel has represented both accusers and the accused. She's not happy.**

BY [KATHY WISE](#) PUBLISHED IN [FRONTBURNER](#) MAY 19, 2020 11:35 AM

Michelle Simpson Tuegel started her career in Waco as a criminal defense attorney before developing a niche in Title IX cases, first representing some of the Baylor football players accused of sexual misconduct on campus. She made the switch to representing accusers, and eventually became one of the key lawyers in the [Larry Nassar sexual abuse cases](#), helping secure the largest settlement (\$500 million) against an American university (Michigan State) in a sexual assault case. She also happens to be a world-champion water skier. So she understands the life of a female athlete, and she understands Title IX, the federal law that prohibits discrimination based on sex in education programs and creates a mechanism for students to file administrative complaints of harassment, sexual assault, and rape through colleges and universities.

On May 6, 2020, Education Secretary Betsy DeVos issued [new regulations](#) regarding Title IX which go into effect on August 14. They take up 2,033 pages. Nobody has time for that. So I called up Tuegel to get her crib notes. The following has been edited for clarity and length.

**How are you surviving the pandemic?** I mean, we are fully remote and my travel has come to a complete halt since early March, and I don't know when I'll be back on the road. A lot of stuff is on hold. Especially since I've got a lot of litigation in New York right now. Everything is so impacted up there, and you couldn't even file a lawsuit. They had put a freeze on even doing that. I think that's been lifted now, but it's been interesting. You know, especially for sexual assault or serious injury or death cases, which are the majority of my cases, I'm very wary and cautious of doing a lot

that involves my client, because I can't be there with them. And if we get to the point where I have to do that, then we'll cross that bridge. But it's not ideal.

**So, have you read all 2,000 pages?** I've read through the summary charts that they provided. And then, of course, I read a lot of literature just analyzing what this means for schools and what this is going to look like practically speaking.

**What are your big takeaways at this point?** I would say, overall, I think these changes are bad. The things that are taking us backwards greatly outweigh some of the positives. Some of the positives are things that are going to impact not only accused students and make the process a little bit better, but also help survivors and the people who are representing survivors. But one of the huge changes is their redefinition of what is sexual harassment, and making a much narrower definition. So there are going to be a lot of things now that fall out of the purview of a school's Title IX investigation.

A fair process is good for all, but to actually change the purview and the definition is different than changing the fairness of the process. Schools now play by different rules for gender violence than they do for racial discrimination or discrimination based on national origin or disability. So that means they're actually applying a lower standard now for gender violence. And one of the biggest things is no longer requiring coaches, faculty, or employees at colleges and universities to report an allegation of sexual misconduct or sexual assault to a Title IX office.

**You handled a number of the Larry Nassar lawsuits, representing young gymnasts who were sexually assaulted by the USA Gymnastics national team doctor. Would these new regulations have had an impact on those cases?** I don't think they would fall into that because they involve the assault of a child, and I don't think that you can ever legislate out of reporting something that is required under criminal laws, but I think this basically allows schools to not have to report it or for the employees to not have to report it. It is really in conflict with some of the new regulations from the NCAA, and it's in conflict with some criminal laws. It's in conflict with [SafeSport](#), which governs all of the national governing bodies of sport like USA Gymnastics or USA Skiing. There's just going to be conflict now.

**Can schools continue to do more if they choose to?** Of course, one of the things that I look at and hope will happen is that schools — the new regulations are the bare minimum — that schools have a right to take a more proactive approach to address sexual violence, but there just won't be federal oversight and some schools will do that. But if I have seen anything, a lot of schools will do the bare minimum. I think of the Baylor cases, and how a big piece of that case was a lot of the administrators and people at the top [knew](#) about access sexual violence involving athletes and they didn't

do anything. And this is saying most people don't have to report. That's kind of insane to me.

I still think the way that it's worded is kind of squishy in that it does not require them to report, but they still could. And I think the schools can also have more stringent rules within their own policies, especially private schools. But I don't know that they will. I think to some degree it allows them to hide behind when they don't report. It's a huge failure at a lot of these schools where they've had blowups related to sexual assault and misconduct. That is an epidemic at a university like [Michigan State](#). At [Penn State](#), [University of Michigan](#) — which I'm involved in those cases now — [USC](#), there is always somebody in the chain of command who could do something and didn't do anything.

This is saying you don't have to. From a big picture perspective, that's a step backwards. We really want victims to have the ability to do what they want to do. But in a lot of those cases, the victims have gone to the authority and the adult that they trusted who was their coach or their trainer or their professors, and they told that person because it was the person they felt safe telling. And then nothing happened. I think we are a lot more informed and I think schools are doing a little better job about informing students of where to report in the process. But I think there's also a certain element of duty when someone out of the school who is in that position of power — like [Art Briles](#) or [Ken Starr](#) or [Kathie Klages](#) — that when they know about this information, and they are someone who could do something about it, and then they have the ability not to — that's really not protecting victims.

**What are the good things in the regs?** There are some changes in the required notice period and the amount of time that the parties had to review them and respond. As an attorney who represents students and has represented students on both sides, they have these really arbitrary timelines. Sometimes the school will give you a report that's 500 pages, and sometimes the students didn't have an advisor. You have five days to respond. That's insane. Nothing in the court process is ever that short. It's really just an unreasonable and arbitrary deadline on students that are already stressed and trying to navigate a hard process. They have extended that to 10 days. That's a little better.

And the added ability to have an advisor can be a good thing. But there is going to be a mess created in making sure both parties have advisors that are equally qualified and that there aren't huge inequities for, you know, a wealthy accused student being able to hire an attorney with a lot of experience in this area and a victim who has no resources getting a school-provided person who isn't even an attorney, because it does not require the advisor to be an attorney. There are going to be some real inequities in the process with that. And you know, I don't know the answer. We see some inequities in our criminal system on the same front.

I do think there's going to be a chilling impact. I mean, we went from a 53-page document with the Obama era guidance to now a 2,033-page guidance from DeVos. And that's a lot to navigate. Even with an advisor. It's a lot for me to read and to relearn.

**How do you think the current move toward remote learning at many colleges and universities will impact incidences of sexual harassment and discrimination in education?** The regulations don't really tell us how they are going to govern online learning and potential online harassment, which y'all have seen in the university context. I've had a number of cases where that's a problem. But if those students are learning online from their parents' houses, is that something that they're going to investigate and deal with? I think it should be, but I don't know that it will be. I think arguably it falls outside of that based on the way that the new rules are worded, and that's a problem.

I have several Title IX investigations that have really just been put on pause indefinitely because they won't disseminate the reports to us digitally, and they want me to go to the school with my client in another state during COVID. And that's just not feasible right now. Some of the places I would have to go are actually hotspots, but I'm like, I'm not going and my student isn't even there right now. And so they're going to have to make some digital adjustments, just like they are in the context of teaching and learning.

A lot of schools and attorneys general pleaded with DeVos not to put this guidance out right in the midst of this pandemic, where schools are already in such a stressful situation and trying to figure out and reallocate resources. But she did it anyways. I think it would have made sense to wait, but I don't think they really care.