

TITLE IX TRAINING
OFFICE OF CIVIL RIGHTS
FINAL REGULATIONS
2020
[K – 12 Schools]

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Virtual Live Training Requests

- WE ARE RECORDING!
- Please Mute Yourself
- Questions in the Chat
- Because this is a virtual live presentation, a request is made of the attendees to place questions in the chat to be asked by the moderator at the end of the session. Time will be reserved at the end of each session for question and answer

What You Will Learn

This two-part training that will address:

- The purpose of Title IX
- Roles of the Title IX Coordinator, the investigator, the decision-makers and the informal resolution facilitator
- Key definitions
- Grievance process
- Notification and documentation requirements
- Conducting investigation, hearing, issuing an outcome determination letter and executing the appeals process.

What You Will Learn

Training Day 1: The What and Why Overview and Understanding

- What is Title IX
- Key Definitions Part I
- Key Title IX Roles
- Decisions to be made:
 - Personnel to fill various required roles
 - Standard of Proof
 - Decision-makers
 - Informal Resolution process

What You Will Learn

Training Day 2: The How

Implementing the New Regulations

- Incident Report to Formal Complaint to Investigation
- Key Definitions Part II
- How to Conduct the Investigation
- Hearing Process
 - Post-Investigation/Pre-Hearing
 - Hearing or Administrative Outcome
 - Outcome Determination Letter
- Appeal Process

Title IX Final Regulations

Part I:

Understanding the New Regulations

TITLE IX KEY QUESTIONS

- What is Title IX?
- Who is responsible?
- How do you effectively implement what is required?
- What do the New Regulations Require?

TITLE IX KEY QUESTIONS

- What is Title IX?
 - A federal Civil Rights law that prohibits discrimination based on sex in education
- Who is responsible?
 - Schools. They need to have the necessary key personnel (Title IX Coordinator, Investigators, Decision-Makers/Adjudicators, Informal Resolution Facilitators) **identified, trained and in place** to effectively respond to a Title IX Complaint
- How do you effectively implement what is required?
 - On-going training, publishing and publicizing to all members of the school community about Title IX

TITLE IX KEY QUESTIONS

What do the New Regulations Require?

- All recipients (schools, LEAs, IHEs) **SHALL ensure** that no student, employee or third party participating in or attempting to participate in an education activity or program is **discriminated against based on sex**
- Creation or revision of Title IX procedures
- Identify a Title IX Coordinator and other key personnel,
- Train all key personnel
- Alert all members of the school community about Title IX policies, and publishing the Title IX Coordinator, the policies, the procedures and training materials on their website

Key Personnel in Title IX Process

- Title IX Coordinator
- Investigator
- Decision-Maker(s) (or panel of decision-makers)
- Advisor (only applicable when using a “live” hearing)
- Informal Resolution Facilitator
- Appeal Decision-Maker
- Possible other involved personnel:
 - HR Director
 - School Counselor
 - School Resource Officer

What must the Key Personnel know?

Schools must ensure that Key Personnel receive training on:

- Definition of sexual harassment
- The jurisdiction/scope of Title IX: who and what is covered
- How to conduct an investigation and an equitable grievance process
- How to serve in impartially
- How to assess credibility
- How to determine issues of relevance

34 CFR §106.45(b)(1)(iii)

WELCOME TO HISTORY CLASS!

History and Evolution of Title IX

What is Title IX?

- “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. Sec. 1681
- Enforced by the U.S. Department of Education, Office for Civil Rights

History of Title IX

- Civil rights statute enacted in 1972 to prohibit discrimination based on sex in education programs and activities
 - Historically, people have commonly thought of Title IX as addressing gender equity in sports, but Title IX has always had a mandate to address sex discrimination in hiring, admissions and other aspects of a school's education programs or activities.
- Today, Title IX's reach is much broader
- Guidance from OCR has changed multiple times over the years.

History of Title IX

- There are significant cases that the Department of Education highlighted in the preamble of the Final Regulations that are referenced as the basis for the amendments on how schools should implement Title IX.
 - Cannon v. University of Chicago, 441 U.S. 677 (1979)
 - Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992)
 - Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998)
 - Davis v. Monroe County Board of Education, 526 U.S. 629 (1999)

History of Title IX

Cannon v. University of Chicago, 441 U.S. 677 (1979)

- Two primary objectives
 - To avoid use of Federal funds to support discriminatory practices
 - To provide individuals with effective protection against discriminatory practices
- Judicial and administrative enforcement both help ensure “the orderly enforcement of the statute” to achieve Title IX’s purposes.

History of Title IX

Franklin v. Gwinnett County Public Schools, 503 U.S.
60 (1992)

- The Supreme Court acknowledged that sexual harassment and sexual abuse of a student by a teacher may mean the school itself engaged in intentional sex discrimination.
- School District can now be on the hook!

History of Title IX

Gebser v. Lago Vista Independent School District,
524 U.S. 274 (1998)

- Supreme Court analyzed the conditions under which a school district will be liable for money damages for an employee sexually harassing a student
- Liability for money damages in private Title IX lawsuit where a school has actual knowledge of an employee sexually harassing a student but responds with deliberate indifference to such knowledge
- Knew, but no action or insufficient action to stop

History of Title IX

Davis v. Monroe County Board of Education, 526
U.S. 629 (1999)

- The Supreme Court not adopt the Title VII definition of sexual harassment (severe, persistent, **or pervasive**) for use under Title IX
- Define sexual harassment for Title IX purposes as conduct that is “severe, pervasive, **and objectively offensive**” that effectively deny equal access to school programs or activities
- Extend Title IX protection to student-on-student harassment

Where We Are Today

- The 2020 final regulations represent the Department's interpretation of a recipient's **legally binding obligations**, rather than best practices, recommendations, or guidance.
- NOT just “suggestions”
- “These **final regulations focus on precise legal compliance requirements governing recipients**. The final regulations leave recipients the flexibility to choose to follow best practices and recommendations contained in the Department's guidance....” (pg.18)

2020 Final Regulations

The New Title IX Regulations

- On May 6, 2020, the U.S. Department of Education issued the 2,033-page document that amended the regulations implementing the Title IX of the Education Amendments of 1972 and which contained the new Final Regulations
- Steps that led to the Final Regulations:
 - In November 2018, the U.S. Department of Education issued proposed changes to Title IX procedures as called the Notice of Proposed Rulemaking
 - U.S. Department of Education received over 124,000 comments during a 6-month public comment period
 - Eighteen (18) months later, the final regulations were issued
 - Effective August 14, 2020

34 CFR Part 106

The New Title IX Regulations

The new Title IX regulation holds schools accountable for failure to respond **equitably and promptly** to sexual misconduct incidents and ensures a more reliable adjudication process that is fair to all students

Why K-12 Included

- On February 26, 2020, U.S. Dept of Education issued a press release about a renewed focus on combating sexual assault and sex harassment in K-12 schools.
- Data for the 2015-2016 school year showed there were approximately 9,700 incidents of sexual assault, rape or attempted rape reported in public elementary and secondary schools.
- According to the Department, "The number of K-12 sexual harassment and violence complaints filed with OCR is nearly fifteen times greater than it was a decade ago. This disturbing change is a matter of serious concern and requires immediate attention."

2015-2016 Civil Rights Data Collection: School Climate and Safety at www2.ed.gov/ocr/docs/school-climate-and-safety

Full Effect of Law

- Final Regulations specify how recipients of federal financial assistance must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination.
- Final Regulations, unlike past guidance issued in 2011 and 2014 from the Office of Civil Rights (OCR) within the Department, have the full effect of law and override any past guidance.
- First time legally binding rules on recipients with respect to sexual harassment in educational setting.

What do the Final Regulations Require?

- Prompt
- Supportive
- Resolve
- Accurate
- Fair (Equitable)
- Due Process
- Remedies

What do the Final Regulations Require?

- Respond **Promptly and Supportively** to persons alleged to have been victimized by sexual harassment
- **Resolve** allegations of sexual harassment **promptly and accurately** under a **predictable, fair grievance process** that provides **due process** protections to the alleged victim and alleged perpetrators of sexual harassment
- Effectively implement **remedies** for victims

Key Provisions

- Defines sexual harassment to include sexual assault, dating violence, domestic violence, and stalking, as unlawful discrimination on the basis of sex
- Provides a consistent, legally sound framework on which survivors, the accused, and schools can rely
- Requires schools to offer clear, accessible options for any person to report sexual harassment
- Empowers survivors to make decisions about how a school responds to incidents of sexual harassment
- Requires the school to offer survivors supportive measures, such as class or dorm reassignments or no-contact orders
- Protects K-12 students by requiring elementary and secondary schools to respond promptly when any school employee has notice of sexual harassment

Key Provisions

- Shields survivors from having to come face-to-face with the accused during a hearing and from answering questions posed personally by the accused
- Requires schools to select one of two standards of evidence, the preponderance of the evidence standard or the clear and convincing evidence standard – and to apply the selected standard evenly to proceedings for all students and employees, including faculty
- Provides "rape shield" protections and ensures survivors are not required to divulge any medical, psychological, or similar privileged records
- Requires schools to offer an equal right of appeal for both parties to a Title IX proceeding
- Gives schools flexibility to use technology to conduct Title IX investigations and hearings remotely

(<https://www.ed.gov/news/press-releases/secretary-devos-takes-historic-action-strengthen-title-ix-protections-all-students>)

Conduct Covered Under Title IX

➤ Sexual Harassment

- Quid Pro Quo
- Verbal
- Physical
- Electronic

➤ Sexual Assault

- Rape
- Fondling
- Incest
- Statutory Rape

➤ Stalking

Conduct Covered Under Title IX

- Dating violence

- Includes, but is not limited to, sexual or physical abuse OR the threat of such abuse

- Domestic Violence

- Retaliation*

*(see p. 96 , footnote 257 in Final Regulations)

Jurisdiction of Title IX

- Protects any person for **conduct** that takes place **“in the United States”** and
- An **“education program or activity”** includes “locations, events, or circumstances over which the **recipient exercised substantial control** over both the respondent and the context in which the harassment occurs”

34 CFR §106.44(a)

Jurisdiction of Title IX

- Title IX obligations extend to sexual harassment incidents that occur off campus if any of three conditions are met:
 - if the off-campus incident occurs as part of the school's "operations"
 - if the school exercised substantial control over the respondent and the context of the alleged sexual harassment that occurred off campus

34 CFR §106.2(h), 106.44(a); and pp. 624-625

Jurisdiction of Title IX

- **Exception:** nothing in these final regulations prevents a school from addressing conduct that is outside the Department's jurisdiction due to the conduct constituting sexual harassment occurring outside the school's education program or activity or occurring against a person who is not located in the United States.
- Dismissal of a formal complaint because the allegations do not meet the Title IX definition of sexual harassment, does not preclude a school from addressing the alleged misconduct under other provisions of the school's own code of conduct.

34 USC §106.45(b)(3)

Public Notice and Compliance

- Effective August 14, 2020, every school that has a website must post important information about the school's Title IX policies and procedures on their website
- The new Title IX Regulations specifically requires schools to post on their websites:
 - The contact information for the school's Title IX Coordinator(s)
 - The school's non-discrimination policy
 - All training materials used to train the school's Title IX personnel

Public Notice and Compliance

- **Notice:** Requires schools to designate at least one employee as the Title IX Coordinator and “prominently display” the Title IX Coordinator’s contact information (office address, telephone number and an e-mail address) on the school’s website.
- **Non-Discrimination Policy:** Requires schools to notify students, employees, applicants, parents and guardians, and others that the school does not discriminate on the basis of sex, and that Title IX requires the school not to discriminate. This non-discrimination policy must also be prominently displayed on the school’s website.
- Schools must ensure that **reports can be made at any time, including during non-business hours**, by using the Title IX Coordinator’s listed telephone number or e-mail address, “or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.”

34 CFR §106.8(a), §106.8(b)(2)(i), §106.8(b)(1)

Risk = Federal Money Pulled

A school's Federal financial assistance is terminated by the Department if and only after the Department:

- Advises the school of a Title IX violation
- Attempts to secure voluntary compliance
- The school refuses to come into compliance

KEY DEFINITIONS – PART 1

34 CFR §106

Definitions

- Sexual Harassment
- Actual Knowledge
- Supportive Measures
- Formal Complaint
- Deliberate Indifference
- Grievance Process
- Standard of Proof:
- Formal Resolution
- Informal Resolution: Mediation and/or Restorative Justice
- Due Process
- Outcome Determinations
- Appeal

Sexual Harassment

- New Regulations broaden to require policy to cover all “sex-based misconduct”
- WHY?
- Sex-based misconduct can be “so severe, pervasive and objectively offensive that it effectively denies a person equal access to the [school’s] program or activity.”

34 CFR §106.30

Sexual Harassment

- Sexual Harassment
- Sexual Assault (Violence)
- Dating Violence
- Domestic Violence
- Stalking

Sexual Harassment

Conduct on the basis of sex that satisfies one or more of the following:

- **Quid Pro Quo**: An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct
- **Unwelcome conduct** determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the recipient's education program or activity

Definition (2) uses the *Davis* standard not the Title VII standard

Sexual Harassment

Conduct on the basis of sex that satisfies one or more of the following:

- “Sexual assault” as defined in the 20 U.S.C. 1092(f)(6)(A)(v),
- “Dating violence” as defined in 34 U.S.C. 12291(a)(10),
- “Domestic violence” as defined in 34 U.S.C. 12291(a)(8), or
- “Stalking” as defined in 34 U.S.C. 12291(a)(30)

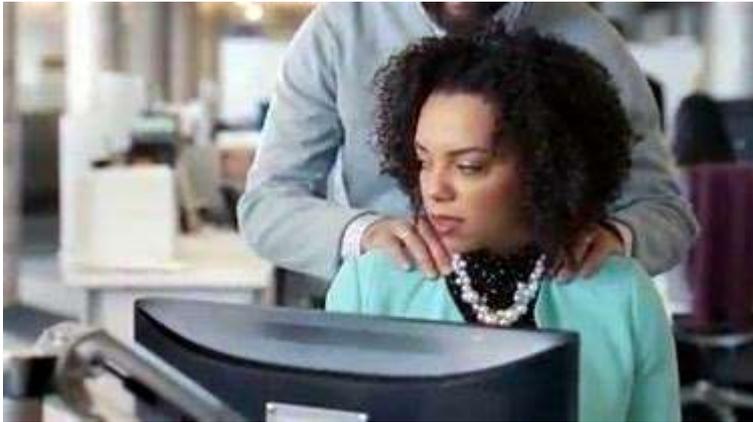
Definitions for (2)-(4) are found in the Clery Act and Violence Against Women Act (VAWA)

Sexual Harassment

- Elementary and secondary schools are not subject to the Clery Act...**BUT**
- Elementary and secondary school recipients **MUST** look to the definitions of sexual assault, dating violence, domestic violence, and stalking as defined in the Clery Act and VAWA in order to address those forms of sexual harassment under Title IX

<https://clerycenter.org/><https://clerycenter.org/>

WHAT IS IT?



WHAT IS IT?

Factors to Consider

- Age of victim
- Age of Perpetrator: employee or fellow student
- Nature of the sexual conduct
- Frequency and duration of conduct
- Location of conduct
- Conduct unwelcome
- Impact access to educational programs/activities

WHAT IS IT?

Examples and illustrations: VERBAL

- Sexual innuendoes, suggestive comments
- Humor, teasing, and jokes about sex, anatomy or gender-specific traits
- Sexual propositions, repeated requests for dates
- Turning discussions to sexual topics
- Asking about sexual fantasies, preferences, or history
- Sexual comments about a person's clothing, anatomy, or looks
- Telling lies or spreading rumors about a person's personal sex life

WHAT IS IT?

Examples and illustrations: NON-VERBAL

- Suggestive or insulting sounds (whistling)
- Leering or staring
- Obscene gestures
- Sexually suggestive bodily gestures, "catcalls", "smacking", or "kissing" noises
- Posters, signs, pin-ups, or slogans of a sexual nature
- Jokes and sexually suggestive letters, phone calls, emails or text messages

WHAT IS IT?

Examples and illustrations: PHYSICAL

- Touching
- Roving eyes
- Grabbing
- Slapping or patting
- Unwelcome hugging or kissing
- Pinching
- Brushing the body
- Sex assault: coerced sexual intercourse, or actual assault

Sexual Assault

An offense that meets the definition of Rape, Fondling, Incest or Statutory Rape as defined in the FBI's Uniform Crime Reporting System.

20 U.S.C. 1092(f)(6)(A)(v)

Dating Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
- The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- For the purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.

34 U.S.C. 12291(a)(10)

Domestic Violence

A felony or misdemeanor crime of violence committed:

- by a current or former spouse or intimate partner of the victim
- by a person with whom the victim shares a child in common
- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

34 U.S.C. 12291(a)(8)

Stalking

Engaging in a **course of conduct** directed at a specific person that would cause a reasonable person to:

- fear for the person's safety or the safety of others; or
- suffer substantial emotional distress

34 U.S.C. 12291(a)(30)

Retaliation

- Retaliation against any person for exercising their rights under Title IX is prohibited
- No intimidation, threats, coercion or discrimination
- If the individual engaging in retaliatory acts is a student or third party, the recipient may take discipline against the student and issue a no-trespass order against the third party
- The retaliation prohibition applies to acts against complainants, witnesses or any other individual involved in any manner with the investigation, proceeding or hearing

34 CFR §106.71

Consent

- The Regulations do not require schools to adopt a particular definition of consent with respect to sexual assault
- However if a definition is drafted, must apply equally to both parties.

Complainant/Respondent

- **COMPLAINANT**- individual alleged to be the victim of conduct that could constitute sexual harassment
 - Does not require a formal complaint to use this designation
- **RESPONDENT**- alleged perpetrator of conduct that could constitute sexual harassment
 - Does not need to be adjudicated or a formal complaint filed to use this designation

Actual Knowledge

- Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary or secondary school.
- **Enough knowledge** of harassment that school reasonably could have responded with remedial measures to address the conduct
- Moving target

Notice

Whenever any elementary and secondary school employee, any Title IX Coordinator, or any official with authority:

- witnesses sexual harassment
- hears about sexual harassment or sexual harassment allegations from a complainant (i.e., a person alleged to be the victim) or a third party (e.g., the complainant's parent, friend, or peer)
- receives a written or verbal complaint about sexual harassment or sexual harassment allegations
- **by any other means**

Educational Program or Activity

- Locations, events or circumstances over which the school exercises substantial control over both the respondent and the context in which the harassment occurs
- Encompasses “all of the operations” of a recipient, which may include computer and internet networks, digital platforms, and computer hardware or software owned, operated by, or used in the operation of the recipient

Deliberate Indifference

- “A recipient (school) acts with deliberate indifference only when it responds to sexual harassment in a manner that is “clearly unreasonable in light of the known circumstances... because for a recipient with actual knowledge to respond in a clearly unreasonable manner constitutes the recipient committing intentional discrimination”
- Factors:
 - Degree of control over the harasser and environment
 - Prompt, appropriate, and thorough
- Liability = actual knowledge + deliberate choice to permit sexual harassment

34 CFR §106.44(a)

Supportive Measures

- **Individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party** while designed to ensure equal educational access, protect safety, or deter sexual harassment.
- Such measures are designed to **restore or preserve equal access** to the recipient's education program or activity without unreasonably burdening the other party
- Examples: **counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus,** and other similar measures.
- The school **must maintain as confidential** any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.

34 CFR §106.30

Supportive Measures

- Title IX Coordinator must remain responsible for coordinating the effective implementation of supportive measures
- Grievance process **MUST** describe the range of supportive measures available to complainants, which may or may not continue after a finding of non-responsibility
- **Document:** If a recipient/school **does not provide** a complainant with supportive measures, then they **must document the reasons why** such a response was not clearly unreasonable in light of the known circumstances.
- Thus, if a recipient determines that a particular supportive measure was not appropriate even though requested by a complainant, **the recipient must document why the recipient's response to the complainant was not deliberately indifferent**

34 CFR §106.45(b)(1)

Emergency Removal Process

- Final regulations expressly **authorize** schools to **remove** a respondent from the school's education programs or activities on an **emergency basis**, with or without a grievance process pending, as long as **[following removal] notice and opportunity to challenge** the removal is given to the respondent.
- **Standard of Review:** A recipient's decision to initiate an emergency removal will also be evaluated under the deliberate indifference standard.

34 CFR §106.44

Emergency Removal Process

- Immediate threat to the physical health or safety of any students or other individuals arising from the allegations of sexual harassment.
- Prior to the emergency removal, a school MUST:
 - Conduct an individualized safety and risk analysis
 - More than a “generalized, hypothetical, or speculative belief” and
 - Look at specific situation/respondent and examine the circumstances “arising from the allegations of sexual harassment”
 - Determination of immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal
 - Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- Note: IDEA and Section 504 rights still apply

34 CFR §106.44

Administrative Leave

A school can place a non-student **employee** respondent on **administrative leave** during the pendency of a grievance process

34 CFR §106.44

Formal Complaint

Formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment

- Time of filing: complainant must be participating in or attempting to participate in the education program or activity of the recipient
- Filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator.
- The Department will hold schools responsible for a recipient's failure or refusal to investigate a formal complaint.

34 CFR §106.30

Formal Complaint

- A formal complaint is NOT required in order for a school to have actual knowledge of sexual harassment or allegations of sexual harassment
- Actual knowledge activates a school's legal obligation to respond promptly
 - By offering supportive measures to a complainant
 - Explaining to the complainant the process for filing a formal complaint
- A parent or guardian has the legal right to act on behalf of a complainant or respondent (e.g. as an Advisor or filing a formal complaint)

34 CFR §106.30

Due Process – the “Why”

“[D]ue process principles of notice and a meaningful opportunity to be heard and the importance of an impartial process before unbiased officials, set forth the procedures adapted for the practical realities of sexual harassment allegations in an educational context that are most needed to (i) improve perceptions that Title IX sexual harassment allegations are resolved fairly and reliably, (ii) avoid intentional or unintentional injection of sex-based biases and stereotypes into Title IX proceedings, and (iii) promote accurate, reliable outcomes, all of which effectuate the purpose of Title IX to provide individuals with effective protection from discriminatory practices.”

P. 100 Final Regulations

Grievance Process

Consistent and transparent process

- Treat both parties equitably
- No conflicts of interest or bias for or against either party
- Provide complainant with remedies
- Not impose disciplinary sanction against respondent without following grievance process and only if there is a finding of responsibility
- Reasonably prompt
- School must identify the standard for evidence: Preponderance of the evidence v. Clear and convincing
- Any provisions, rules, or practices that a school entity adopts as part of its grievance process for handling formal complaints of sexual harassment, must apply equally to both parties

34 CFR §106.45

Informal Resolution Process

- Mediation or restorative justice may be offered
- Both parties **MUST** give voluntary, informed written consent to participate
- Not available and cannot be used for sexual harassment claims involving employees against students
- School cannot require waiver of formal investigation as condition of enrollment
- Managed by an Informal Resolution Facilitator who must be trained, unbiased and impartial

34 CFR §§106.45(b)(9) and 106.45(b)(10)

Standard of Proof

Each institution/school must determine which standard of proof they will require for claims of sexual harassment 34 CFR §106.45

- **Clear and convincing evidence:** Higher standard than preponderance of the evidence, but less than beyond a reasonable doubt. The truth of the facts asserted is “highly probable.”
- **Preponderance of the evidence:** “More likely than not” standard of proof. This is met when there is a greater than 50% chance of the fact(s) being true.
- **NOTE: P.R.E.S.S. Policy 2:265 = Preponderance**

ROLES AND RESPONSIBILITIES

The Players

- Title IX Coordinators
- Investigators
- Decision-makers
- Informal Resolution Facilitators
- Appellate Decision-makers

The Players

- Responsible for implementation of Title IX protections and the grievance process
- Must be trained on Title IX policies and procedures
 - All training must be posted on school's website
- No conflicts of interest or bias and retaliation is prohibited

Impartiality

- Recipients **are not required** to use outside unaffiliated Title IX personnel to avoid conflicts
- **May use own employees** to comply with the final regulations
- Administrative hierarchy, employment relationships, and professional experiences or affiliations (such as a self-described survivor or feminist) are not automatically prohibited conflicts of interest
- Recipients have discretion to decide how best to implement the prohibition on conflicts of interest and bias, including providing a process for parties to assert claims of conflict of interest or bias during the investigation

34 CFR §106.45(b)(1)(iii)

Title IX Coordinator

- Employee designated to ensure compliance with regulations and to receive complaints
- Must be identified by on the school's website and post all Title IX materials (policy and training)
 - Name
 - Title
 - Office address
 - Email address
 - Telephone number

Role of the Title IX Coordinator

- Monitoring compliance with Title IX
- Ensuring appropriate education and training is provided
- Coordinating the investigations, responses, and resolutions of all reports under this policy
- Ensuring appropriate actions to eliminate sexual harassment, prevent its recurrence, and remedy its effects
- Reviewing regularly the effectiveness of the efforts of the recipient to ensure that the educational setting is free from sexual harassment

Role of the Title IX Coordinator

- The Title IX Coordinator should make themselves:
 - Accessible and Visible
 - Available to meet with any Student, Employee, or Third Party to discuss this policy or the accompanying procedures
- Title IX Coordinator should have a trained designee or designees, equipped with the same skills and abilities to execute the duties of the Title IX Coordinator
- All Title IX Coordinators must:
 - Receive appropriate training to discharge their responsibilities
 - Deliver continuous and updated training to the school community

Duties of Title IX Coordinator

- Contacts each complainant (i.e., person who is alleged to be the victim of sexual harassment) to discuss supportive measures,
- Considers the complainant's wishes regarding supportive measures
- Informs the complainant of the availability of supportive measures with or without the filing of a formal complaint
- Explains to the complainant the process for filing a formal complaint

Duties of Title IX Coordinator

- Must treat complainants and respondents equitably by following a grievance process that ensures due process before imposing any disciplinary sanctions, if respondent is found responsible
- If a respondent is found responsible for sexual harassment, effectively implement remedies for the complainant, designed to restore or preserve the complainant's equal educational access, and
- May impose disciplinary sanctions

34 CFR §106.44(a)

Who Should It Be?

- Anyone who is properly trained can be the Title IX Coordinator
- Not have other job responsibilities that may create a conflict of interest
- Designating a full-time Title IX Coordinator will minimize the risk of a conflict of interest
- Examples:
 - Human Resources officer
 - Principal
 - Assistant Principal
 - Dean

Investigator

- Assigned by the Title IX Coordinator
- Must be impartial, unbiased and free from conflicts
- Oversees the prompt, thorough gathering of all facts based on the filing of formal complaint
- Effectively communicates with all participants throughout and involved in the investigation
- Provide notice of any good faith delays
- Understands relevance to create an investigative report that fairly summarizes relevant evidence

Decision-makers

- Oversees the **hearing** or administrative determination proceeding or, when applicable, reviews **appeals**
- Must be impartial, unbiased and free from conflicts
- Training on
 - any technology to be used at a live hearing,
 - issues of relevance of questions and evidence, including when questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant
- Title IX Coordinator and Investigators cannot serve as the Decision-maker

34 CFR §106.45

Informal Resolution Facilitator

- Serves as a Mediator and oversees the Informal Resolution Process seeking a resolution to a formal complaint that both parties agree, in writing, to resolve using restorative justice or mediation practices
- Must be impartial, unbiased and free from conflict

Outside Help

You may need additional people to fill roles
[Investigator, Decision-maker] – CONSIDER:

- Former Superintendents
- Retired Employees/Teachers/Administrators
- Local Professionals
- Local Colleges – professors, pre-law students

- NOTE: School responsible for training!
- Might have added cost for services

QUESTIONS

THANK YOU

SRNM EDUCATION LAW GROUP

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