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- This training is intended for educational purposes only and does not contain sample forms for use in Title IX investigation and/or decision-making process.

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Overview of Training

• Introduction to Title IX law
• Title IX regulations
• Title IX legal obligation
• Title IX Coordinator – responsibilities and notifications
  • Impartiality, Stereotypes, Bias, Conflicts of Interest, Trauma
• Employees with responsibility to report
• Notice of sexual harassment
• Grievance process
  • Informal resolution
  • Hearings
  • Appeals
• Policies and process
• State law considerations
• Other compliance issues
• 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.

• Enforced through the Department of Education, Office for Civil Rights (OCR)
1998-1999
Supreme Court decisions on Title IX

Rescinded Guidance from OCR under Obama administration

2001
Regulations on Title IX

Title IX Coordinator

2017
Q&A on Campus Sexual Misconduct

2015
Final Rules on Title IX (effective 8/14/20)

2020
Notice of Interpretation – sexual orientation/gender identity

2021
Questions and Answers on New Regs

BINDING GUIDANCE ON TITLE IX
Educational institutions must respond in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment occurring in the institutions’ education programs or activities against a person in the United States.
Title IX Covers and Includes

- Prohibition of Sex Discrimination
- Harassment
- Athletics
- Employment
- Pregnant Students
- Recruitment, Admission, Programs
Title IX Coordinator

Name and title
Office address
Email address
Phone number
Title IX Coordinator Information

Must be shared with:

- Students
- Parents
- Employees
- Applicants for admission
- Applicants for employment
- Unions and/or parties to collective bargaining agreements

Must promptly display contact information in each handbook or catalog made available to those persons.

Must notify these individuals of non-discrimination.

Must include notice of grievance procedure.
Title IX Coordinator Responsibilities

- Coordinate the Title IX response on behalf of the school
- Monitor outcomes and identify patterns
- Adoption of Title IX policy and procedure
- Access to relevant data (i.e., participation, budgets)
- Information easily found and in designated publications
- Permitted to conduct investigations
- Permitted to oversee investigations
- Avoiding conflicts of interest, including exclusion from serving as the decision-maker

Appropriate authority, qualifications, training, and time (2015 Guidance - rescinded)
Coordinate the School’s Response

- Receive reports of claims and potential claims
- Provide required notices
- Examine and (re-examine) supportive measures
- Determine appropriateness of a potential removal proceeding
- In some instances, act as investigator
- Identify proper decision-maker
- Decide who will manage an appeal, if necessary
- Coordinate investigation, sharing of information between the parties, final outcome letter, and offering of appeal options
- Ensure proper documentation
- Provide training
<table>
<thead>
<tr>
<th>Intake</th>
<th>Investigation</th>
<th>Outcomes</th>
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<tr>
<td>• Formal complaints from allegations</td>
<td>• In-house</td>
<td>• Timelines</td>
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<tr>
<td>• School sites</td>
<td>• External</td>
<td>• Policy violations</td>
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<td></td>
<td>• Title IX and state Sexual Harassment</td>
<td>• Discipline</td>
</tr>
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Potential Patterns

Complaints from one site/no complaints from a site

Similar types of complaints

Students with disabilities

Data analysis for planning purposes
• Review annually

• Take into account the time-consuming board review and approval process

• Set timelines for your process
Impartiality

• Be neutral – neither pro-Complainant nor pro-Respondent
• Consider the evidence as presented
• Confront and understand bias and not allow it to impact decision
• Maintain open mind as to the potential conclusions
Conflicts of Interest

• Relationship to parties or witnesses
• Professional conflicts
• Personal conflicts
• Actual and perceived
Stereotypes

• “A fixed, over generalized belief about a particular group or class of people.” (Cardwell, 1996)

• Stereotypes around sexual assault

• Stereotypes around sexual harassment

• Complainant and Respondent
Bias

- Conscious/Explicit
  - Discriminatory intent
  - Stated preferences

- Unconscious/Implicit
  - For the most part, most people are unaware of these drivers
  - Developed over a period time and can influence many factors in hearing
  - Short cuts developed by the brain and often play a role in:
    - Immediate response to conflict
    - Often mimics fear responses
Many Title IX causes of action involve trauma

Title IX Coordinators should understand the impact of trauma on:
  - Reaction to trauma
  - Ability to capture memories
  - Recollection of memories

Expectations around trauma victim
Title IX – Parties and Administrators

**Parties**

- Complainant – alleged victim/survivor
- Respondent – respond the allegation

**Administration of Claims**

- Title IX Coordinator
- Title IX Investigator
- Title IX Hearing Officer/Panel (Decision-maker)
- Title IX Appeal Officer
- Title IX Advisor
- Title IX Informal Resolution Officer
Educational institutions must respond in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment occurring in the institutions’ education programs or activities against a person in the United States.
When sexual harassment or allegations of sexual harassment come to the attention of:

• Title IX Coordinator

• Official with authority to institute corrective measures
  • depends upon the institution’s operational structure and the employee’s specific roles and duties
  • discretion to designate which of its employees must report sexual harassment disclosures to the Title IX Coordinator and which employees can remain as confidential resources
Educational institutions must respond in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment occurring in the institutions’ education programs or activities against a person in the United States.
Jurisdiction Issues

• Occurring in the institution’s education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred

• Against a person in the United States
GP: Dismissal - Mandatory and Permissive

**Mandatory dismissal**
- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.

**Permissive dismissal**
- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complaint or allegations
- Respondent is no longer enrolled or employed by school district
- Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination
Definition of Sexual Harassment

Conduct on the basis of sex:

- **Quid pro quo** - An employee who conditions the receipt of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.

- **Hostile environment** sexual harassment, defined as unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectionably offensive that it effectively denies a person equal access to the school's education program or activity (emphasis added).
Definition of Sexual Harassment, continued

Sexual Assault, as defined in 20 USC 1092(f)(6)(A)(v)

- Rape
- Fondling
- Incest
- Statutory Rape

Dating/Domestic Violence

Stalking

*Section 106.30*
• Bostick v. Clayton County

• Prohibition against sex discrimination includes protections for:
  • Sexual orientation
  • Gender identity
Grievance Process (GP)

• Respond promptly in a manner that is not deliberately indifferent
• Due process and fundamentally fair procedures to adjudicate the allegations
• Upon notification, supportive measures offered
  - Emergency removal
• Offer of formal process
  - Complainant files or Title IX Coordinator may file
• Both parties receive notice of the allegations
• Both parties participate in investigation and can inspect information gathered
• Separate decision-maker(s)
• Completed in a prompt time-frame
• Retaliation prohibited - designate the retaliation complaint process

Section 106.45
GP: Emergency Removal Procedure

- Step 1 – Conduct a prompt individualized safety and risk analysis
- Step 2 – Immediate threat to the safety the physical health or safety of any student or other individual Arising from the allegations of sexual harassment
- Step 3 – Evaluate the applicability of disability laws to the removal decision
- Step 4 – Consider the appropriateness of supportive measures in lieu of an emergency removal
- Step 5 – Provide the respondent with notice and an “immediate” opportunity to challenge the emergency removal
Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent and are designed to restore or preserve equal access to the District’s education programs or activities without unreasonably burdening either party, including measures designed to protect the safety of all parties or the District’s educational environment, or deter sexual harassment.
• Complainant offered formal process

• Complainant must file and request an investigation
  • Filing can be in person, by phone, email

• Wishes of complainant are to be respected
GP: No Formal Complaint Filed

- Title IX Coordinator may decide to proceed with investigation
- Title IX Coordinator does not become Complainant
GP: Informal Resolution

• Trained facilitators

• After formal complaint is filed

• Process must be detailed in writing

• Described to both parties

• Parties agree in writing

• Either party may end informal resolution before a formal agreement is accepted

• Never available when complainant is student and respondent is employee
GP: Notice of Allegations

- Detailed allegations against respondent
- Supportive measures offered to respondent
- No supportive measure can appear disciplinary
GP: Separate Decision-Makers

- Title IX Coordinator may serve as investigator
- Title IX Coordinator may NOT serve as decision-maker
  - Policy violation
  - Discipline
- Hearing panels required for colleges and universities
• Investigation gathers relevant and irrelevant information

• All information must be shared with both parties

• Parties have ability to review investigation report and outcome, provide comments/written questions and provide answers and limited follow-up
GP: Burden of Proof

- Preponderance of the evidence
- Clear and convincing
GP: Decision-Maker

- Decision-maker (Hearing Officer or Hearing Panel) must determine:
  - Policy violation; and
  - Discipline
GP: Hearing Process

- Live hearings (in person and remote)
- Advisors at hearing (even when party may not appear)
- Participation cannot be compelled
- Cross examination by advisors
- Evidence evaluated by hearing officer/panel
- Evidence may be excluded if no cross examination (in flux)
- Outcome of policy violation and discipline issued

- Complex process that requires significant support
GP: Evidence Review

• RELEVANCE – Applying to the matter in question; affording something to the purpose (Black’s Law Dictionary)

• NOT permitted:
  • Sexual history of Complainant (see Rape Shield exception)
  • Privileged communications
  • Medical documentation

• Not repetitive
• Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant

• unless such questions are offered to
  • prove that someone other than the respondent committed the conduct
  • are offered to prove consent.

Section 106.45(b)(6)(i)
GP: Appeal

- Procedural irregularity in the Title IX grievance process affected the outcome;

- Newly discovered evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could affect the outcome; or

- Due to a bias or conflict of interest by the Title IX Coordinator, investigator, or decision-maker (hearing panel/hearing officer) that affected the outcome.
Title IX and Sexual Harassment

Policies and Process
Title IX New Regulations Impact College Policies

Review Policies
• Employee policies
• Sexual Harassment
• Nondiscrimination

Student Policies
• Sexual Harassment
• Nondiscrimination

Process
Other Considerations

• Title IX and state law interaction

• Title IX file review

• Community outreach
  • Climate surveys
  • Focus groups
  • Student/parents special interest groups
Review: Title IX and State Law Process

- Title IX
- Title IX Coordinator
- Formal Complaint
- State Law
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<td>Intake from Complainant</td>
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<td>Offer of formal process and advise of informal resolution options</td>
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<td>Supportive measures</td>
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<td>Formal process initiated</td>
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<td>Determination of process that applies</td>
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<td>Notice of Allegations (Title IX)</td>
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