



**EducationAdminWebAdvisor**  
Online Training for Educational Professionals

## **Title IX Boot Camp for Higher Education (With Updates)**

**Session 1: Title IX Procedural Requirements,  
Defining Sexual Harassment, and  
Obligations to Respond**

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# Overview



## **Introduction**

- Scope of Discussion
- Impact of Regulations



## **Basics of Title IX**

- Legal Requirements, Enforcement



## **Impact of the 2016 Elections on Title IX**



## **New Regulations – Definitions, Procedural Requirements, and Obligations to Respond**



## **Conclusion**

# Introduction



# Introduction



## Focus on harassment



## Other laws

- ADA, Section 504, Title VI, Title VII
- State Laws



## Impact of new regulations

- Effective August 2020
- Institutions must review and revise policies on sexual harassment.

# The Basics



# The Law

## »»» Title IX

- No person in the U.S. 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.

## »»» Title IX Regulations

- 34 C.F.R. 106

## »»» Enforced by Office of Civil Rights





# Application of Title IX to Sexual Harassment



## **Title IX prohibits sexual harassment.**

- OCR Guidance, March 1997
- Davis v. Monroe County, USSC 1999
  - Actual knowledge
  - Severe, pervasive and objectively offensive
  - Deliberately indifferent
- OCR guidance, January 2001



# Application of Title IX to Sexual Harassment



## **Sexual harassment prohibited.**

- Quid Pro Quo and Hostile Environment



## **OCR standards for harassment**

- Knows or reasonably should know
- Sufficiently severe, persistent or pervasive
- Stop, eliminate, and prevent harassment



## **OCR guidance (2010 and 2015)**



# 2016 Election and Department of Education

# 2016 Election and Office for Civil Rights

- ▶▶▶ Trump elected; DeVos confirmed
- ▶▶▶ Focus on regulations, not guidance.
- ▶▶▶ September 2017 guidance
- ▶▶▶ Proposed regulations
  - November 2018



# Final Regulations

# Changes to Introduction



## Subpart A- Introduction

- Changes to Section 106.6
  - Constitution
  - FERPA
  - Title VII
  - Preemptive Effect

# Procedural Requirements



## Subpart A- Introduction

- Changes to section 106.8– Procedural requirements
  - Must designate and authorize at least one employee to coordinate its efforts to comply with responsibilities under this part
  - Employee must be referred to as the “Title IX Coordinator.”
  - Must notify certain persons of the name or title, office address, email address, and telephone number of the Title IX Coordinator
  - The persons include applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations, holding collective bargaining or professional agreements with the institution.

# Procedural Requirements



## Subpart A- Introduction

- Changes to Section 106.8 – Procedural Requirements
  - Must disseminate a policy of nondiscrimination.
  - Must notify same persons (1) that the institution does not discriminate on the basis of sex in the education program or activity that it is operates and (2) that it is required by Title IX and this part not to discriminate in such a manner.
  - Must state in notice that this requirement not to discriminate extends to admission and employment.
  - Must state in notice that inquires about the application of Title IX and this part may be referred to the Title IX Coordinator, the Assistant Secretary, or both.

# Procedural Requirements



## Subpart A- Introduction

- Changes to section 106.8– procedural requirements
  - Must follow publication requirements
  - Must prominently display the contact information for the Title IX Coordinator (discussed above) and the policy (discussed above) on:
    - Its website, **and**
    - In each handbook or catalog that it makes available to the persons (discussed above)
  - Must not distribute publication stating that the institution treats groups differently on the basis of sex, except as permitted under Title IX

# Procedural Requirements



## Subpart A - Introduction

- Changes to Section 106.8 – procedural requirements
- Must adopt and publish **grievance procedures** that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part
- Must adopt and publish a **grievance process** that complies with 34 CFR 106.45 for formal complaints of sexual harassment
- Must provide persons (above) notice of the grievance procedure and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond
- Applies only to sex discrimination occurring against a person in the U.S



# Definitions– Recognizing Sexual Harassment

## » Sexual harassment

- An employee of the institution **conditioning** the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct (quid pro quo)
- 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 institution's education program or activity, **or**
- Sexual assault, dating violence, domestic violence or stalking (as defined by law)

# Harassment Scenarios— Recognizing Sexual Harassment

## »» Student-on-student harassment

- Male student is accused of trying to kiss and grabbing the breast of a female student in a dormitory on campus. Friend of female student reports the conduct.

## »» Employee-on-employee harassment

- Director of Admissions is accused of sending an inappropriate email to an office administrative assistant and also making suggestive comments to her. Administrative assistant reports this conduct to Title IX Coordinator.



# Obligations for Responding



An institution with actual knowledge of sexual harassment in an education program or activity of the institution against a person in the U.S. must respond promptly in a manner that is not deliberately indifferent.

A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.



# Obligation to Respond- Actual Knowledge



**Notice of sexual harassment or allegations of sexual harassment to:**

- Title IX Coordinator
- Any official of the institution who has the authority to institute corrective measures on behalf of the institution



**Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.**



# Obligations for Responding Within the Education Program or Activity

## »» Within the 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 sexual harassment occurs
- Includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution



# Reporting Sexual Harassment

## Reports of harassment

- Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment).
- Any person may report in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.



# Reporting Sexual Harassment

## Reports of harassment

- A person may report sex discrimination, including sexual harassment, at any time (including during non-business hours) by using the telephone number or email address or by mail to the office address listed for the Title IX Coordinator.
- Notice of sexual harassment (actual knowledge) includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.



# Definitions– Reporting Sexual Harassment

## Complainant

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment
- The complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed

## Respondent

- An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment



# Responding to Sexual Harassment Allegations



**Absence of formal complaint, must still respond in manner that is not deliberately indifferent. No investigation is required, but the institution must do something.**



**Institutions must treat complainants and respondents equitably by offering supportive measures to a complainant and by following a grievance process under 106.45 before imposition of any disciplinary sanctions or other actions against a respondent.**



# Responding to Sexual Harassment Allegations



## Title IX Coordinator must promptly:

- Contact the complainant to discuss the availability of supportive measures,
- Consider the complainant's wishes with respect to supportive measures,
- Inform the complainant of the availability of support measures, **and**
- Explain to the complainant the process for filing a formal complaint



# Responding to Sexual Harassment Allegations



## Supportive measures

- Means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonable available, and without fee or charge to the complainant or the respondent, before or after the filing of a formal complaint or where no formal complaint has been filed
- Are designed to restore or preserve equal access to the institution's education program or activity without unreasonably burdening the other party



# Responding to Sexual Harassment Allegations



## Supportive measures

- Includes measures designed to protect the safety of all parties or the institution's environment or deter sexual harassment
- May include counseling, extensions of deadlines or 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



# Response to Sexual Harassment Allegations



## Supportive measures

- The institution 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 institution to provide the supportive measures.
- The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.



# Retaliation/Confidentiality



»» No institution or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated, or refused to participate in any manner in an investigation, proceeding or hearing.



An institution must generally keep confidential the identity of any individual who made a report or complaint of sex discrimination (including any individual who has made a report or filed a formal complaint of sexual harassment), any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness.

# Recordkeeping Requirements



For each response for an allegation of sexual harassment, an institution must create, and maintain for a period of seven years, the following records:

- Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment
- The basis for its conclusion that its response was not deliberately indifferent, and documentation that it has taken measures designed to restore or preserve equal access to the education program or activity



# Recordkeeping Requirements



For each response for an allegation of sexual harassment, an institution must create, and maintain for a period of seven years, the following records:

- If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
- The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.








# Conclusion





# Conclusion

-  Need to recognize and identify sexual harassment
-  Need to know how to report sexual harassment
-  Need to identify how to respond to sexual harassment allegations

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# Questions



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