

Title IX For Career, Technical & Trade Schools: The New Role of the Title IX Coordinator

Presented by
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Today's Presentation

- Recap and Overview of Title IX Sexual Harassment Complaint Process
- Definition of Sexual Harassment
- Implementing a revised Title IX Program
- The Title IX Coordinator's role



RECAP AND OVERVIEW OF TITLE IX COMPLAINT PROCESS

Recap

- Final Rule published 5-19-2020 (85 Fed Reg 30026)
- Effective August 14, 2020
- Amends 34 CFR Part 106

Prohibits Sex Discrimination

No person in the United States shall on the basis of **sex**, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance

WHAT IS SEXUAL HARASSMENT?

Sexual Harassment

- Conduct on the basis of sex that falls into one or more of the following 3 categories:

1. Quid Pro Quo

- An employee of the school conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct;

2. Hostile Environment

- 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; or

3. Sexual Violence

- “Sexual assault” as defined in 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)

Sexual Violence

- **Sexual Assault:** As defined in 20 U.S.C. 1092(f)(6)(A)(v), means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- **Dating Violence:** As defined in 34 U.S.C. 12291(a)(10), means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and, the frequency of interaction between the persons involved in the relationship.

Sexual Violence

- **Domestic Violence:** As defined in 34 U.S.C. 12291(a)(8), includes felony or misdemeanor crimes 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 receiving grant monies, or 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.
- **Stalking:** As defined in 34 U.S.C. 12291(a)(30), means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

Title IX Complaint Process Overview

- Formal Complaint Received by Title IX Coordinator
- Optional Informal Resolution Process
- Investigation
- Live Hearing
- Decision and Remedial Measures
- Appeals



TITLE IX POLICY IMPLEMENTATION

Title IX Coordinator Visibility

- Contact information must be posted on website and in each handbook or catalog provided to prospective/current students and employees
 - Name or title, office address, email address, and telephone number
- Anyone can report sex discrimination (including sexual harassment) even if they are not the victim by mail, telephone email or in person

Implementing a Title IX Policy

- Title IX Coordinator responsibility
 - At least one employee
- Published on the website, student catalog, employee handbook:
 - Notice of Non-discrimination based on sex
 - Training materials for Title IX personnel
 - Title IX Coordinator contact information
- Publish Prompt and Equitable Grievance Procedure applicable to students and employees

Policy Considerations

- Standard of proof
- Reporters
- Definition of consent
- Informal resolution
- Hearing format and protocols
- Discretionary dismissal
- Process for non-Title IX misconduct



TITLE IX COORDINATOR ROLE

Overall Responsibilities

- Develop compliant policies and procedures for reporting and resolving
- Conduct training for students and Title IX personnel
- Evaluate reports, apply policies and procedures
- Implement supportive measures
- Guide timeline
- Assign investigators and monitor investigative process
- Assign Decision-Makers and monitor grievance process
- Maintain records

How is this Different than the Former Role?

- No longer required to serve roles of administrator, investigator and decision-maker.
 - These roles are now separate in an attempt to provide a fair process and to avoid conflicts of interest
- Must be neutral, fair to both sides, and avoid conflicts of interest
- Only Formal Complaints move forward

Responsibilities with a Formal Complaint

- Title IX Coordinator or designee responsible for:
 - Document the complaint
 - Providing Supportive Measures
 - Assessment – Title IX applies?
 - Notice of allegations and investigation
 - Notice of hearing
 - Transmitting Written Determination
 - Remedies
 - Recordkeeping

Notice

- Title IX Coordinator must ensure that the school responds when:
 - Actual knowledge of sexual harassment
 - Title IX Coordinator or Official with Authority
 - Within the education program or activity
 - Substantial control
 - In the United States
- School violates Title IX when its response to sexual harassment is clearly unreasonable in light of the known circumstances (deliberate indifference)

Requests for Confidentiality

- Defer to Complainant's wishes as to whether to pursue an investigation
- So long as doing so does not prevent the school from effectively preventing the harassment of other students of the Complainant

Response to Requests for Confidentiality

- Explain to the Complainant:
 - Responsive action/Remedies are limited based on level of confidentiality requested
 - Only those with a need to know will be informed
 - No retaliation

May Need to Investigate

- Threat
- Violence/Weapon
- Minors (always reported to proper authorities)
- Pattern
- If schools proceeds, notify Complainant and utilize Supportive Measures

Without a Formal Complaint

- Where no formal complaint is filed triggering the Title IX grievance procedure, but the school has actual knowledge of sexual harassment, the school must still respond without deliberate indifference
- Provide supportive measures

Supportive Measures

- Title IX Coordinator must promptly and confidentially contact Complainant and offer supportive measures.
- Offered regardless of whether or not Complainant has filed a Formal Complaint
- Consider Complainant's wishes
- Title IX Coordinator must explain the process of filing a formal complaint.
- Title IX Coordinator responsible for implementation

Supportive Measures

- Required in all cases (formal complaint not needed)
- Individualized, appropriate and reasonably available
- Designed to preserve or restore equal access
- Provided without charge
- Non-disciplinary and non-punitive
- Available to Complainant and Respondent, as applicable
- Confidential

Supportive Measures

- Designed to:
 - Restore or preserve access to the school's education program or activity
 - Without unreasonably burdening the other party
 - Protect the safety of all parties and the school's educational environment, and
 - Deter sexual harassment

Examples of Supportive Measures

- 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

Emergency Removal

- Can remove a student Respondent from education Program or Activity or place an employee Respondent on administrative leave
- Undertake and individualized safety and risk assessment
- Need justification for removal
- Provide Respondent with notice and an opportunity to immediately challenge the removal
- Clery Act timely warning

Complaint Dismissal

- School *must* dismiss a Formal Complaint if:
 - Allegations do not meet the definition of sexual harassment
 - Did not occur in the school's education program or activity against a person in the United States
- School *may* dismiss a Formal Complaint if:
 - Complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein
 - Respondent is no longer enrolled or employed by the school
 - If specific circumstances prevent the school from gathering sufficient evidence to reach a determination.

Complaint Dismissal

- If a complaint is dismissed, the school must give the parties written notice of a dismissal (mandatory or discretionary) and include the reason for dismissal.
- School may still address the allegations under another policy
 - Conduct Policy

Advisors

- Parties have the right to select an advisor during an investigation and hearing
- Can be an attorney, but does not have to be
- If the Complaint goes to a live hearing, the parties must have an advisor
- If the party does not have an advisor, the school must provide, without charge, an advisor of the school's choice
- An school-appointed advisor is not required to be an attorney
- Only advisors may conduct cross-examination of witnesses

Retaliation

- Title IX Coordinator must ensure that the school's policy effectively prohibits retaliation
- Policy must prohibit intimidation, threats, coercion, or discrimination for making a complaint or participating in process
- Retaliation does not have to be on the basis of sex or involve sexual harassment

Retaliation

- Retaliation complaints may use the same grievance process as sexual harassment complaints
- School must keep identities of complainant, respondent, and witnesses confidential except as permitted by FERPA
- The following do not constitute retaliation:
 - First Amendment free speech
 - Charging a person with a code of conduct violation for making a false statement



TRAINING

Training Title IX Personnel

- Title IX Coordinator must ensure that Title IX personnel are trained on:
 - Definition of sexual harassment in the Final Rule
 - Scope of school's education program or activity
 - Conducting an investigation and grievance process including hearings, appeals, and informal resolution processes
 - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

Training Officials with Authority

- Background and overview of Title IX
- Applies to students, employees and third parties
- Notice
- Education program or activity
- When and how to report to Title IX Coordinator
 - All relevant details (names and facts)

Training Students and Employees

- Review school policy
- What is Sexual Harassment
- Title IX Coordinator contact information
- Discuss how to report
 - Reporting resources
 - How to make a Formal Complaint
 - Confidentiality
- Supportive Measures
- Clery/VAWA sexual violence training

IMPARTIALITY, CONFLICTS OF INTEREST & BIAS

Fair and Impartial

- § 106.45 requires recipients to adopt a grievance process where Title IX Coordinators, investigators, decision-makers, and persons who facilitate informal resolutions are free from conflicts of interest and bias and are trained to serve impartially without prejudging the facts at issue

Fair Grievance Process

- All persons involved in grievance process
 - Must be free from conflicts of interest or bias against Complainant and Respondent
 - Must receive training on:
 - Definition of sexual harassment
 - How to conduct an investigation and the grievance process
 - How to serve impartially
 - How to make relevancy determinations

Impartiality

- Cannot have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent

Conflict of Interest

- When an individual has competing interests or loyalties
- Potential to reap personal gain from decisions, actions or inaction
- Inclination to filter decisions through lens of self-interest

Bias

- Prejudice in favor of or against an individual or situation
- Disproportionate weight in favor or against certain facts that prevents objectivity
- Insensitivity to facts that otherwise would be significant
- Avoid inferences based on whether someone is a Complainant or Respondent



Thank You!

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