



# **TITLE IX COORDINATOR TRAINING**

**DATE DEVELOPED: OCTOBER 2021**

# **WHAT WE'LL COVER TODAY**

Overview of Title IX

Forms of gender discrimination

Compliance checklist

Title IX Coordinator role

Model training

# **REFERENCE MATERIALS**

Reference materials:

Institution's Title IX Policy and Grievance Procedures

Institution's most recent Clery Act Annual Security Report

**WHY THIS MATTERS**



# **SEXUAL HARASSMENT/VIOLENCE IN COLLEGES**

As of September 2015, there were over 130 postsecondary education institutions under investigation by the Department of Education's Office for Civil Rights (OCR) for Title IX Violations

Investigations focus on the school's handling of sexual violence and harassment complaints

# TITLE IX



# **SOURCES OF LAW**

Statutory: Title IX, VAWA

Regulatory: Federal regulations 34 CFR §§ 668.46 (VAWA)

Guidance: Dear Colleague Letters and Office for OCR Q&A

# TITLE IX

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.



# GENDER DISCRIMINATION

“Denial of access to education” is interpreted very broadly

Includes:

- express bans based on gender
- treating students differently based on gender
- discrimination based on gender
- Discrimination includes sexual harassment and sexual violence

# WHAT IS SEXUAL HARASSMENT?

Unwelcome conduct of a sexual nature

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive school environment

Sexual harassment is prohibited by school policy and is unlawful

# WHAT IS SEXUAL VIOLENCE?

Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent)

A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion

Sexual violence can be carried out by school employees, other students, or third parties

All such acts of sexual violence are forms of sex discrimination prohibited by Title IX

## **WHAT'S CHANGED?**

Title IX has always prohibited discrimination, including sexual harassment

Following VAWA and new regulations, schools have to do more to detect and prevent discrimination, including sexual violence

This is a significant expansion of schools' obligations

# SEX VS. GENDER

Note that the language in the statute refers to “sex” not gender

This has been interpreted to cover “gender stereotypes”— i.e., the roles that men and women traditionally play

Students and employees are protected from discrimination/harassment/sexual violence on the basis of their sex

Extends to our friends in the LGBT community

# WHO IS PROTECTED?

Title IX's sexual harassment and discrimination provisions (including sexual violence) extend to both employees and students

This means that for employees, in addition to guaranteeing their rights under other state and federal laws, the school has additional obligations under Title IX

## **WHERE DOES TITLE IX APPLY?**

Extends to all school-related activities — on and off campus

Can include non-school sponsored activities that “affect” the school environment (more on this later)



# **COMPLIANCE CHECKLIST**



# COMPLIANCE CHECKLIST

Schools must have all of the following:

- Notice of Nondiscrimination
- Title IX Coordinator(s)
- Grievance Procedure



# **NOTICE OF NONDISCRIMINATION**

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Puts students and employees on notice of their rights under Title IX

Provides information for contacting the school's Title IX coordinator and OCR

It's okay to update via catalog addendum or other notice

# **NOTICE OF NONDISCRIMINATION CHECKLIST**

Must state at least all of the following:

- The school does not discriminate on the basis of sex in its education programs and activities
- The school is required by Title IX not to discriminate in this way
- Questions regarding Title IX may be referred to the Title IX Coordinator or the OCR
- Name, office address, phone, and email address of the Title IX Coordinator



# **TITLE IX COORDINATOR**

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The single point of contact for all complaints and issues relating to Title IX issues — discrimination, sexual harassment, and sexual violence

Responsible for investigating complaints and enforcing school policy

Can be one or more individuals

# TITLE IX COORDINATOR DUTIES

Core responsibilities:

- oversee the school's response to Title IX reports and complaints
- identify and address any patterns or systemic problems

Must be:

- knowledgeable of the requirements of Title IX, the school's policy and procedures, and all complaints raising Title IX issues
- informed of all reports raising Title IX issues
- given the training, authority, and visibility to fulfill these duties

## **TITLE IX COORDINATOR (CONTINUED)**

Who should be the Title IX Coordinator?

Defined in the negative by OCR, i.e. who should not be in the role

Not have a job that creates a conflict of interest  
i.e., someone in the grievance process chain





# **GRIEVANCE PROCEDURE**

# GRIEVANCE PROCEDURE

Schools must:

- adopt and publish grievance procedures
- provide for “prompt and equitable” resolution of student and employee sex discrimination complaints
- Can be included in ordinary grievance process, but must meet all the requirements of Title IX

# GRIEVANCE PROCEDURE CHECKLIST

“Critical Elements” according to OCR:

- **Notice** to students and employees of grievance procedures
- Application of the **grievance procedure** to complaints filed by students (or on their behalf) alleging sexual violence carried out by employees, other students, or third parties
- Provisions for adequate, reliable, and impartial **investigation** of complaints, including the opportunity for both the complainant and the alleged perpetrator to present witnesses and evidence

# GRIEVANCE PROCEDURE CHECKLIST (CONTINUED)

- Designate reasonably prompt **time frames** for the major stages of the complaint process (max of 60 days to completion)
- Written notice to the complainant and alleged perpetrator of the **outcome** of the complaint
- Assurance that the school will take **steps to prevent recurrence** of any sexual violence and remedy discriminatory effects on the complainant and others as appropriate

## WE HAVE TO INCLUDE...

- A statement of the **school's jurisdiction** over Title IX complaints
- Adequate **definitions** of sexual harassment (which includes sexual violence) and an explanation as to when such behavior creates a hostile environment
- Explanation of **how to report** complaints, including provisions for confidential reporting
- Identification of the employee responsible for evaluating requests for **confidentiality** (Title IX Coordinator)

## WE ALSO HAVE TO INCLUDE...

- Statement that Title IX prohibits retaliation
- Explanation of a student's right to file a criminal complaint and a Title IX complaint simultaneously
- Explanation of available interim measures that may be taken to protect the student in the educational setting
- A list of evidentiary standards that will be used (preponderance of the evidence) in resolving a complaint
- A list of potential remedies for students, potential sanctions against perpetrators, and sources of counseling, advocacy, and support

## WHAT ABOUT APPEAL RIGHTS?

- Schools are **not required** to provide a right to appeal
- However, if a school chooses to provide an appeal process, it must be included in the **grievance procedure**



# **REPORTING VIOLATIONS**



# WHO MUST REPORT TITLE IX ISSUES?

- All “Responsible Employees” of the school must report Title IX issues to the Title IX Coordinator
- Responsible Employees include employees who:
  - have the authority to take action to redress sexual violence
  - have been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee
  - those whom a student could reasonably believe have this authority or duty
- So, basically everyone

# WHAT DO WE TELL THE COMPLAINING STUDENT?

- A **Responsible Employee** should tell the student that they:
  - Must report the names of the alleged perpetrator and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator or other appropriate school officials
  - May request that the school maintain his or her confidentiality, which the Title IX coordinator will consider
  - May share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services

# WHAT ABOUT CONFIDENTIALITY?

- If a **student requests confidentiality**, that should generally be respected by the Title IX coordinator
- The student should be informed that:
  - if the information is kept confidential, then the school **may not be able to fully investigate** and punish the alleged harasser
  - **retaliation and discrimination** are prohibited and will be punished
- If the student insists on confidentiality, then the school must assess whether it can honor that request “consistent with its Title IX obligations”

**TRAINING**



# TRAINING

- In addition to the Title IX Coordinator, OCR wants to see training of employees likely to see or receive reports of harassment
- Employees and students should be trained in:
  - school's obligations under Title IX
  - recognizing & reporting harassment, discrimination, and sexual violence
  - school's policies & procedures
  - prevention
- No minimum number of hours or frequency — must be done "regularly"

# **PRACTICAL TIPS FOR TRAINING**

- Employee training should be done when hired and at least every other year thereafter
- Student training can be done in orientation

# **INVESTIGATIONS**



# INVESTIGATIONS

- “Investigation” refers to the **process the school uses** to resolve sexual violence complaints
- Includes the **fact-finding** investigation and any **hearing** and **decision-making** process the school uses to determine:
  - whether or not the conduct occurred; and,
  - if the conduct occurred, what actions the school will take to end the conduct, eliminate the hostile environment, and prevent its recurrence
  - prevention may include imposing sanctions on the perpetrator and providing remedies for the complainant and broader student population



# INVESTIGATIONS

- Must be **adequate, reliable, impartial, and prompt**
- Must include the **equal opportunity** for both parties to present witnesses and other evidence
- **May include a hearing** to determine whether the conduct occurred, but this is not required
- Neither Title IX nor the OCR specifies who should conduct the investigation

# INVESTIGATIONS (CONTINUED)

- School **must** use a "preponderance of the evidence" (i.e., more likely than not) standard
- If **lawyers are permitted**, both parties must be able to have one
- If the school **provides for an appeal**, it must do so equally for both parties
- Both parties must be notified, in writing, of the **outcome** of both the complaint and any appeal
- Keep in mind that the school does not have to provide a right of appeal

# TIPS FOR A SUCCESSFUL INVESTIGATION

- Treat all complaints seriously
- Begin immediately
- Select investigator carefully (need not be the Title IX Coordinator)
- Prepare before interviews – review complaint, school policies, student and/or employee files
- Conduct a thorough investigation – when, where, what, who – and cover the same questions with all interviewees
- Document, document, document

# CLOSING THE INVESTIGATION

- Make a determination
- Facts and credibility
- More likely than not?
- Decide on corrective action and remedial measures, if warranted
- Draft report for Title IX File summarizing claims, investigation, determination, and corrective action
- Draft closing memos to involved parties stating the finding, corrective action, and/or remedial measures and reminding of the non-retaliation requirement

## WHAT IF THE CLAIM LACKS MERIT?

- Or the investigation is inconclusive?
- Document in the same fashion
- State that the school was either unable to corroborate the claims or is unable to conclude that the incident more likely than not occurred as reported by complainant
- No corrective actions will be issued
- Complainant may choose to change classes if he or she has not already done so

# **PREVENTING DISCRIMINATION**



# PREVENTING DISCRIMINATION

- The school is always under an obligation to prevent discrimination, including a hostile environment and sexual violence
- This includes preventing retaliation against those who make good faith complaints of Title IX violations
- It also includes taking steps while an investigation is pending to prevent ongoing harassment and retaliation

# INTERIM MEASURES

- “Interim measures” are steps taken while the **investigation is pending**
- Ensure that the **complainant is protected** and that the school environment is **safe and harassment-free**
- What must be done will vary on a case-by-case basis



# REMEDIAL MEASURES

- Once an investigation is complete, the school must take steps to prevent discrimination and harassment on an ongoing basis
- These are “remedial measures”
- Remedial measures must be taken with respect to the victim, the perpetrator, and the school environment as a whole

## REMEDIAL MEASURES

- Remedial measures redress any negative consequences to the victim, including academic adjustments
- Must take steps to discipline the perpetrator
- May need to take remedial measures for the broader student population

# **OTHER CONCERNS**



## **OTHER CONSIDERATIONS**

- FERPA
- Title IX trumps FERPA per OCR
- Conflict can come up in investigations
- Clery Act
- A sex crime reported to the school – even off campus – may trigger Clery Act & Title IX obligation
- Parents, media, & others
- Stick to school policy



# **HYPOTHETICALS**

# #1 - STUDENT BONDING

- Janice is a new student. A fellow student, Eric, invites her out for drinks after class. Over drinks, Eric asks whether they can have dinner sometime. Janice laughs off the suggestion, and they continue drinking together. At the end of the evening, Eric again asks her to dinner. She says “No.” They end the evening on a friendly note.
- The following day, Eric sends an IM to Janice’s smart phone and again asks her out. Janice responds that she has a partner. Over the next few months, Eric and Janice email one another with jokes and videos, some of which are sexual in nature.
- A couple months later Janice files a claim of sexual harassment claiming that Eric makes her uncomfortable, and it began as soon as she started school.

# INVESTIGATION

- Is an investigation merited?
- Where do you start?
- What questions would you ask?
- Examples:
  - Tell me what happened (avoid “yes” and “no” answers; narratives are helpful)
  - Did you let him know you were uncomfortable with his behavior?
  - What triggered the report?

## **#2 - INAPPROPRIATE BEHAVIOR IN CLASS**

- Lauren and Gail often joke around in class and make sexually charged comments or innuendoes. The instructor has overheard the comments many times and does not know if anyone is uncomfortable with the comments.
- Should she report the behavior to the Title IX Coordinator?



## #3 - TROUBLE WITH A PARTNER

- Yvette confides in her instructor that she and her boyfriend, also a student, have been having issues in their relationship. As a result, Yvette has lost focus at school and is struggling in classes. The instructor did not ask specifically what the “issues” were.
- Should the instructor give the Title IX Coordinator a call?

## #4 - SALON CLIENT

- A regular client of the school's salon always asks for the same student to provide his services. Other students remark that the client gives them the creeps. The requested student has made no such comments.
- Another student comments to the instructor that she feels bad for the requested student and thinks this client makes the student uncomfortable.
- Should the instructor involve the Title IX Coordinator?

## #5 - GIVING THE UP/DOWN

- An employee of the school tends to give everyone the up/down look from head to toe. It doesn't make Jill uncomfortable, but she's noticed this tendency many times. The employee seems to do this with everyone, male and female alike.
- Are there possible Title IX issues implicated? Why or why not?

## #6 - EASYGOING INSTRUCTOR

- Sam is a relaxed, easygoing instructor. She is not offended by student jokes or inappropriate comments. The school instructs her that she needs to tighten the reins in her classroom.
- She begins to tighten the reins and reprimands Shelly, a chronic offender.
- Shelly complains that whenever males in her class have said similar things in the past, they have not been disciplined and complains that Sam is singling her out based on her gender.
- What are the obligations of the school to investigate the claim?

## #7 - UPTIGHT BYSTANDER

- Michelle does not like all of the sexually related jokes and banter that she hears in the classroom.
- She complains to the Title IX Coordinator that she believes it is a hostile environment.
- The Title IX Coordinator interviews other students, and no one else seems bothered in the least.
- What actions, if any, should the school take?