Overview of the Title IX Regulations & Campus Implementation

Effective August 14, 2020
Primary Intent and Obligations

To provide students and employees with a safe learning and working environment that is free from sexual discrimination, harassment, and violence.

1. Provide primary prevention and ongoing education.
2. Respond to, remediate, resolve, and prevent reoccurrence.
Responsible Employee Reporting Requirements

• Under the institution’s Sexual Misconduct Policy, **Responsible Employees** have a duty to report incidents and information reasonably believed to be sexual misconduct (prohibited conduct defined) under this Policy.

• All employees are Responsible Employees (except Confidential Employees). Responsible Employees include **all** administrators, faculty, and staff.

• Responsible Employees must report all known information concerning an alleged incident of sexual misconduct to the **Title IX Coordinator**.
Definition of “Sexual Harassment” under Title IX

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

1. 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);

2. 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

3. “Sexual assault,” “dating violence,” “domestic violence,” or “stalking” as defined under Clery/VAWA.
A School’s Obligation to Respond to Sex Discrimination & Sexual Harassment

- The institution has “actual knowledge” when the notice of sexual harassment, specifically, is submitted to the institution’s Title IX Coordinator (TIXC) (or any official at the institution who has authority to institute corrective measures).
Reports Versus Formal Complaints

• **Reports** of sex discrimination and sexual harassment may be submitted by any person (e.g. complainants, third-parties, bystanders, employees) to the institution.

• In order to initiate the formal grievance process, a signed **formal complaint** must be received. Formal complaints may be made by:
  1. Complainant (actual alleged victim)
  2. Title IX Coordinator in limited situations
Title IX Resolution Flowchart

Formal Complaint

(a) Submitted/Signed by CP

(b) Submitted/Signed by TIXC

Written Notice of Formal Complaint

Supportive Measures

Rights & Options

Notice of Grievance Process

Resolution Options

(1) Formal Grievance Process

(2) Informal Resolution

(3) Formal Complaint Dismissal
Title IX Grievance Process

Formal Complaint Filed

Written Notice sent to both Parties

Investigation Initiated for Evidence Gathering

Assess for Dismissals & Emergency Removal throughout Process

Informal Resolution available until a Determination is made

Prior to Live Hearing:
- Share final Investigation Report & give opportunity to respond in writing

Investigation Concludes:
- Share all Evidence with Parties to inspect & respond

Live Hearing:
- Parties must be present for their evidence & testimony to be considered
- Submit to questions by the other party’s advisor

Hearing Officer: Determination Regarding Responsibility

Appeal of Dismissals & Determination Regarding Responsibility

Ut Tyler
Emergency Removals

1. Individualized safety & risk analysis: Determines that immediate threat to the physical health & safety of any student or other individual arising from the allegations justifies the respondent’s removal from the education program or activity.
   - Notice & opportunity to challenge the decision immediately following the removal.
   - Rights under ADA & Section 504 still apply.

2. Doesn’t preclude an institution from placing non-student employee respondents on administrative leave during the pendency of the grievance process.
Formal Complaint Dismissals under Title IX

1. **Mandatory Dismissals** are required when the *definition* or any element of the *jurisdiction* framework under Title IX is not met:
   - Conduct alleged constitutes “sexual harassment” under the regulations;
   - Conduct alleged occurs in the institution's “education program or activity”;
   - Conduct alleged occurs against a person “in the United States”; or
   - Complainant is participating in or attempting to participate in the “education program or activity” of the institution.
Discretionary Dismissals

- Complainant withdraws the formal complaint or allegations;
- Respondent is no longer enrolled or employed at the institution; or
- Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.
Alternative Grievance Process

• Dismissing a Formal Complaint under Title IX doesn’t preclude an institution from addressing conduct prohibited under an institution’s policy through a fair and equitable grievance process.
Institution’s Sexual Misconduct Grievance Process

Title IX Process

- **Formal Complaint Submitted**
- **Resolution Options**
  - (a) **Formal Grievance Process**, (b) **Informal Resolution**, or (c) **Formal Complaint Dismissal under Title IX**

Alternative Grievance

- **Administrative Disposition**
  - The parties may accept the determination and sanctions (if applicable); waives Live Hearing

- **Live Hearing**
  - Either party may select a hearing for a determination regarding responsibility

Resolution Options

- (a) **Investigation/Determination**, (b) **Informal Resolution**, or (c) **Formal Complaint Dismissal**

- **Live Hearing**
  - Either party may select a hearing for a determination regarding responsibility

Initiate Alternative Process

- (1) **Initiate Alternative Process for Faculty & Staff**
  - When the definitional & jurisdictional framework under Title IX is not met

- (2) **Initiate Alternative Process for Students**
  - When the conduct alleged doesn’t constitute “Sexual Harassment”
Informal Resolutions under Title IX

1. It’s an alternative resolution option once a formal complaint is filed.
   - Available as an option at any time prior to reaching a determination regarding responsibility.
   - Doesn’t involve a full investigation & adjudication.
   - May be facilitated through mediation (as an example).
   - Informal Resolution Process must include: (a) Written notice of allegations, (b) Requirements of the informal process, & (c) Any consequences resulting from participating in an informal process (e.g. record keeping).

2. Not permitted as a resolution option when an employee respondent is alleged of sexual harassment by a student complainant.
Live Hearings under Title IX

1. **Required under Title IX; unless resolved through an informal resolution agreement or a formal complaint dismissal.**

2. Both parties must have **access to evidence obtained** during the investigation, and equal opportunity to refer to such evidence during the hearing.

3. **Each party’s advisor** must be permitted to ask relevant questions of the other party and any witnesses, including questions that challenge credibility:
   - Conducted orally, directly, and in real time by the party’s advisor
   - **Never permitted** by a party personally
Live Hearings under Title IX

4. May be conducted with all of the parties **physically present** in the same geographic location; or

5. Any of the parties, witnesses, & other participants may appear **virtually**, with technology enabling participants simultaneously to **see & hear each other** (at the institution’s discretion).

6. Must create an audio or audiovisual recording, or transcript of any live hearing, & make available to the parties for inspection & review.