

Title IX Coordinator Training - July 2022

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Grand River Solutions

From One Title IX Coordinator to Another:

A Practical Approach to Navigating Beyond Compliance in a Post Regulatory World

Day 1

Presenters: Ann James and Emma Hempel

July 2022

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Meet Your Facilitators

Emma Hempel

She/Her/Hers

Senior Solutions Specialist

Ann James

She/Her/Hers

Senior Solutions Specialist

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About Us

Vision

We exist to help create safe and equitable work and educational environments.

Mission

Bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

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Let's take a moment. Title IX Coordinator to Title IX Coordinator.

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01 The Ever-Evolving Jurisprudence of Title IX

"If nothing else, Title IX Coordinators are experts at adapting."

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Title IX of the Education Amendments Act of 1972

"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."

20 U.S.C. § 1681 (1972).

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Title IX Applies to All Forms of Sex Discrimination

- Sexual Harassment
- Achievement Awards
- Athletics
- Benefits
- Financial Aid
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment
- Retention Rates
- Safety
- Screening Exams
- Sign-on Bonuses
- Student and Employee Benefits
- Thesis Approvals
- Vocational or College Counseling
- Research opportunities

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The History of Title IX - A Timeline

1972 - Title IX is Passed

1979 - Cannon v University of Chicago

1992 - Franklin v Gwinnett

1998 - Gebser v Lago Vista

1999 - Davis v Monroe

2001 - Revised Sexual Harassment Guidance

2011 - Dear Colleague Letter ("DCL")

2014 - Q&A

2016 - DCL on Transgender Students

2017 - 2011 DCL Guidance & 2016 DCL on Transgender Students Rescinded

2018 - DCL and Q&A

2020 - Regulations

2020 - Withdrawal of 2001 Guidance

2020 - Q&A

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The Title IX Regulations - Sexual Harassment Only

1. Narrows the definition of sexual harassment;
2. Narrows the scope of the institution's educational program or activity;
3. Narrows eligibility to file a complaint;
4. Develops procedural requirements for the investigation and adjudication of sexual harassment complaints, only.

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Sexual Harassment: Defined in 1996, 2001, & 2011 Guidance

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) Conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, OR objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) Sexual assault is a form of sexual harassment

*Dating Violence, Domestic Violence, Stalking not included pre 2020 Regulations

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Sexual Harassment: Section 106.30

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (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 recipient's education program or activity; or
- (3) "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).

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Covered Geography

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, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

- On campus or in a building owned or controlled
- Off-campus incident that occurs as part of the institution's operations

- Institution exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off-campus pursuant to § 106.44(a); or
- the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution

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Not Covered

- Off-campus conduct, even if it has an impact on the educational program or activity;
- Conduct that occurs outside of the United States.

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Covered Individuals

Eligibility for Title IX's Protections

“At the time of filing a formal complaint, a 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.” 34 C.F.R. § 106.30

- Applicant
- Accepted/Hired
- Enrolled/Employed

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Title IX Application Post May 2020 Regulations

Type of Conduct

- Hostile Environment Sexual Harassment
- Quid Pro Quo
- Sexual Assault
- Dating/Domestic Violence
- Stalking

Ed Program or Activity

- On campus
- Campus Program, Activity, Building, and
- In the United States

Required Identity

- Complainant is participating or attempting to participate in the Ed Program or activity

Apply 106.45 Procedures

Required Response: Section 106.45 Procedures

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Conduct Falling Outside the Scope of Title IX

- Apply other institutional policies and procedures

- Ensure that those policies and procedures are compliant with VAWA/Clery, other intersecting federal and state laws

Title IX

- Off-Campus Sexual Assault
- Sexual Harassment Abroad
- Severe or Pervasive, only
- Quid Pro Quo Between Students

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Actual Notice

A Narrowed Scope of Institutional Responsibility

Institution must respond when it has:

- “Actual knowledge”
 - When “an official of the recipient who has authority to institute corrective measures” has notice, e.g., Title IX Coordinator
- of “sexual harassment”(as newly defined)
- that occurred within the school’s “education program or activity”
 - “includes locations, events, or circumstances over which the recipient exercised substantial control” over the respondent and the context in which the sexual harassment occurred
 - Fact specific inquiry focused on control, sponsorship, applicable rules, etc.
- against a “person in the United States” (so, not in study abroad context)

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Initial Response Requirements

Receipt of Report

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Outreach/Response from Title IX Coordinator

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Support Measures, whether or not Formal Complaint is filed

↓

How to File

↓

Options for Resolution

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Procedural Requirements for Investigations

- Notice to both parties
- Equal opportunity to present evidence
- An advisor of choice
- Written notification of meetings, etc., and sufficient time to prepare
- Opportunity to review all evidence, and 10 days to submit a written response to the evidence prior to completion of the report

- Report summarizing relevant evidence and 10 day review of report prior to hearing

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Procedural Requirements for Hearings

- Must be live, but can be conducted remotely
- Cannot compel participation of parties or witnesses
- Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters
- Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution
- Decision maker determines relevancy of questions and evidence offered
- Written decision must be issued that includes finding and sanction

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Final Rule § 106.45(b)(8)

“[I]nstitutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient’s dismissal of a formal complaint or any allegations therein.

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Appeals: Mandatory Grounds

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
- (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

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Other Requirements of the Regulations

- Designation of a Title IX Coordinator
- Dissemination of policy
- Separation of Responsibilities
- Training and posting of training
- Impartiality
- Record Keeping

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02 Building a Foundation of Success

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Final Rule, Section 106.8

Designation of Coordinator, Dissemination of Policy, and Adoption of Grievance Procedures

“Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the Title IX Coordinator.”

Additionally:

- The recipient must notify [everyone] of the name or title, office address, email address, and telephone number of the coordinator(s).
- Any person may report in person, by mail/email, telephone using the contact information.
- Reports can be made at any time.

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Final Rule, Section 106.8(a)

The institution must notify applicants and all members of the community of the Title IX Coordinators

1. Name or Title
2. Office address
3. Email address
4. Phone number

Any person may report, at any time, sex discrimination, including sexual harassment in person, by mail, by telephone, by email, or any other means using the contact information listed

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“Responsibilities Required Under Title IX and the Regulations”

- Serve as the primary pathway for receipt of reports of sex discrimination and sexual harassment;
- Upon receipt of a report, promptly contact the complainant to discuss the availability of supportive measures and to explain the process of filing a formal complaint;
- Coordinate the effective implementation of supportive measures;
- Where a report is made, but a formal complaint is not filed by the complainant, determine whether a formal complaint should be filed and sign that formal complaint;
- Effective implementation of any remedies imposed by a decision maker at the conclusion of a grievance process.

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Responsibilities Often Delegated to the Title IX Coordinator

- Ensuring that the institutional policies and procedures are compliant with Title IX
- Ensuring dissemination of the policy
- Overseeing the grievance process to ensure it is compliant
- Coordinating a compliant grievance process
- Staffing various roles
- Ensuring training requirements are met
- Record keeping

- Compliance with intersecting federal and state laws
- Education and prevention efforts

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The Three Essential Functions of Title IX Compliance

01 Response

02 Education & Prevention

03 Compliance

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Another moment, please.

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A Successful Title IX Coordinator...

C - Understands the Importance of Consistency

A - Adheres to policies and procedures

R - Records or documents everything

E - Engages meaningfully with the community

S - Strategically plans for success

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Strategic

- Conduct your own review: Evaluate the institution's state of compliance, strengths, and opportunities in all areas
- Develop plans for success in every area
- Prioritize the implementation and execution of those plans

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Engage

- Understand the needs of the community you serve
- Build awareness
- Build trust
- When you engage, others engage
- Can assist with workload

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Adhere

- Adhere to policies and procedures
- Implement training plans
- Stick to compliance plans
- Use the forms that are developed

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Consistency

- Creation of Forms and Templates
- Development of Annual Plans for Compliance
- Development of Annual Plans for Training
- Comprehensive Policies & Procedures

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Record

Document, Document, Document!

1. Compliance

1. Maintain old policies
2. Keep records of all responses to reporting requirement

2. Training

1. Dates, times, locations
2. Attendees
3. Training materials
4. Reason for the training

3. Response

1. EVERYTHING

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Successful Coordinators Approach all Aspects of the Work

- Impartiality
- Utilizing Best Practices
- With Empathy

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Impartiality

Avoiding Prejudgment and Bias

“The Department’s interest in ensuring impartial Title IX proceedings that avoid prejudgment of the facts at issue necessitates a broad prohibition on sex stereotypes so that decisions are made on the basis of individualized facts and not on stereotypical notions of what “men” or “women” do or do not do.” 85 Fed. Reg. 30254 (May 19, 2020).

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Impartiality

Avoiding Prejudgment and Bias

- Do not rely on cultural “rape myths”
- Do not rely on cultural stereotypes about how men or women purportedly behave
- Do not rely on gender-specific research data or theories to decide or make inferences of relevance or credibility in particular cases
- Recognize that anyone, regardless of sex, gender, gender identity, or sexual orientation, can be a victim or perpetrator of sexual assault or other violence

- Avoid any perception of bias in favor of or against complainants or respondents generally
- Employ interview and investigation approaches that demonstrate a commitment to impartiality

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Impartiality

Avoiding Bias

- Department also rejected commenters' arguments that individuals should be disqualified from serving as investigators because of past personal or professional experience
- "Department encourages [schools] to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased" WHILE
- "exercising caution not to apply generalizations that might unreasonably conclude that bias exists (for example, assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents"

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Impartiality

Avoiding Conflicts of Interest

- Commenters argued that investigators and hearing officers employed by schools have an "inherent conflict of interest" because of their affiliation with the school, so Department should require investigations and hearings to be conducted by external contractors
- Department noted that some of those commenters argued that this resulted in bias against complainants, and some argued that this resulted in bias against respondents
- Department's response: Department's authority is over schools, not individual investigators and other personnel, so Department will focus on holding school's responsible for impartial end result of process, without labeling certain administrative relationships as per se involving conflicts of interest

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Impartiality

Avoiding Prejudgment, Bias, and Conflicts of Interest

Bottom line

- Follow facts of every individual case
- Investigate in manner that will not allow even a perception of prejudgment or bias for or against any party

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Compliance

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Sources of Compliance Obligations

- Title IX Final Regulations
- Violence Against Women Act
- Other, Intersecting Federal Laws
- State Law
- Legal Precedent
- Institutional Policies
- Resolution Agreements

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Title IX Compliance Obligations

- Designate
 - Designate a Title IX Coordinator
- Disseminate
 - Disseminate Policy
 - Notification
 - Publications
- Respond
 - Promptly respond to instances of sexual harassment occurring within the educational program or activity of which the institution has actual knowledge in a manner that is not deliberately indifferent;
- Provide
 - Provide supportive measures in accordance with the requirements of section 160.30
- Utilize
 - For reports of sexual harassment utilize grievance procedures that comply with section 160.45
- Require
 - Require that individuals participating in the grievance process do so impartially and that they are trained in accordance with the 160.45(b)(1)(iii).
- Maintain
 - Maintain records response to sexual harassment in accordance with 160.45 (10)
- Comply
 - Comply with 160.71 prohibition against retaliation

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Categories of Compliance Requirements

- Staffing
- Notice
- Training
- Procedural
- Reporting

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Developing a Strategy for Compliance

- Identify Compliance Obligations
- How Will You Prove That You Are Compliant
- Record Keeping

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Implementing the Strategy for Compliance

- Partnerships
- Record Keeping Databases
- Calendar

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Training & Education

Educating ourselves and our communities in a post-regulatory world

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Sources of Training Requirements

Department of Education - Title IX Final Regulations
VAWA - Violence Against Women Act
State Law
Resolution Agreements

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Training and Education

Two Areas of Focus

1. Institutional Response to Sex Discrimination
2. Prevention Education

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Institutional Response Training

1. Institutional Policies and Procedures
2. Prohibited Conduct
3. Options for Confidential Support
4. The Identify, Role, and Requirements of the Responsible Employee
5. Options and methods for Reporting
6. The Grievance Process
7. The Role of the Title IX Coordinator

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A Really Important Moment. Listen Up. It's Okay...

- To not know the answer to every question thrown your way
- To say,
 - "I don't know"

- “I’d like to think about that”
- “I’ll get back to you”
- “Thank you for sharing your perspective”
- To decline to answer a question
- To recognize and assert your expertise

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Who Must Receive Training?

Title IX Staff

- Coordinators
- Investigators
- Decision Makers (hearings and appeals)
- Facilitators of Informal Resolution
- “Those who are charged with ensuring a prompt, fair, and impartial investigation and result.” (VAWA)

Faculty

- New faculty
- Existing faculty
- Adjunct faculty
- Supervising faculty

Staff

- Senior leadership
- Public Safety/campus law enforcement
- Health care workers

Students

- New students
- Existing students
- Specialized populations
- Student staff

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Community Partners?

- Board of Trustees
- Law Enforcement
- Advocacy Groups
- Health Care Providers
- Attorneys
- Media

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Training for Title IX Staff

- The scope of the institution’s education program or activity (i.e., its Title IX “jurisdiction”)
- How to conduct the grievance process
- How to serve impartially

- The technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Rape shield protections; and,
- Issues of relevance in creating an investigative report.

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Responsible Employees

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Responsible Employee Training: Additional Areas of Focus

- Take time to explain the reason for and importance of Responsible Employee reporting
- Provide advice on how to receive a report
- Provide suggestions on how to share their obligation to report with the reporting individual
- Instruct on their options for reporting to the Title IX Coordinator
- Fully explain what happens after they report a disclosure

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Special Considerations for Training & Education in the Post Regulatory Landscape

- Explaining the narrowed scope of Title IX
- Explaining the institutional decision for two processes/procedures
- Responsible Employee challenges
- Burden of proof challenges
- Length of Training
- Time for questions/community processing

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Prevention Education: Title IX Regulations

“The Department understands the commenters’ beliefs that the Department should create rules that monitor drinking, teach about interpersonal boundaries, sexuality, bystander intervention, and sexual consent communication...[A]nd while the Department does not mandate educational curricula, nothing in the final regulations impedes recipients’ discretion to provide students (or employees) with educational information.” 85 Fed. Reg. 30063 (May 19, 2020)

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Prevention Education: Violence Against Women Act (VAWA)

- A primary prevention and awareness program [which includes bystander intervention] aims to prevent dating violence, domestic violence, sexual assault, and stalking.
- Ongoing prevention and awareness campaigns.

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Elements of Annual Training Strategy

- Identify population to be trained
- Determine topic
- Schedule the training
- How will you deliver the training
- Partnerships
- Communications
- Community input/feedback
- Engagement as passive education

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Ongoing Assessment of Trainings

- Pre and Post Surveys
- Observation
- Opportunities for Feedback & Suggestions
- Engage and Listen

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Communicate Training Success

- Annual Report
- On your website
- When training
- In conversations

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Questions?

Leave Us Feedback: (Image of QR Code)

Email Us: info@grandriversolutions.com

Twitter: @GrandRiverSols

Facebook and Instagram: Grand River Solutions

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Grand River Solutions

From One Title IX Coordinator to Another:

A Practical Approach to Navigating Beyond Compliance in a Post Regulatory World

Day 2

Emma Hempel and Ann James

July 2022

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Day 2 Agenda

01 Receipt of Reports - Actual Knowledge, Report Response, Initial Assessments, & Supportive Measures

02 Complainant Intake & Supportive Measures

03 Report Resolution - Remedies Based, Informal, or Formal

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Receipt of Reports

Actual Knowledge, Report Response, Initial Assessments, and Supportive Measures

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Infrastructure for Reporting

- Develop methods/avenues for reporting
- Communicate reporting methods and what folks should expect after submitting a report
- Develop a plan for receiving and reviewing the reports
- Develop a protocol that ensures a prompt response to reports
- Develop and adhere to a practices for documenting reports and responses

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Regulatory Requirements

Notice to College/University

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Outreach/Response from Title IX Coordinator

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Support Measures, whether or not Formal Complaint is filed

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How to File

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Options

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Receiving Reports and Initiating the Response

1. Review the Report
2. Determine the Initial Response
3. Promptly Initiate that Response
4. Document/Record the Receipt of the Report and the Response Thereto

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Initial Outreach

- FIRST —SAFETY
- Email
 - Create forms
- Phone
- In person
 - Use RA
 - Campus safety
- Follow up emails

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Emergency Removal of Student

- High threshold
- Not a determination of responsibility
- Whether or not grievance is underway
- Individualized
- Immediate threat (physical)
- Opportunity to challenge

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Scenario

The Title IX Office receives the following anonymous report via your institution's online reporting form:

Riley Smith is in trouble. I live on their floor in River Hall and I constantly hear fighting and crying coming from their room at night. Every time I see Riley with their partner, they seem really submissive and nervous and I have noticed bruises on Riley the mornings after the biggest fights. The RA and Riley's partner are friend and so the RA doesn't do anything about it. It's getting so bad that some of the other people on the floor are talking about intervening, but we are afraid of Riley's partner too.

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Scenario

The Title IX Office is contact by a professor who forwards the following email from a student to you:

I really don't want to bother you but I'm in a really hard situation.

I and my boyfriend had a row for these days. And he beated me yesterday and this morning that I attached some pictures before XXXX final starts this afternoon because I found out I couldn't hold pencil because of trembling and I couldn't even think in the first thirty minutes. These pictures shows my arms after he twisting them, which doesn't look violent but feel hurt. One hour before lab final started, I told him I'm going to call police after he beated me, then he dragged me from bed to the floor and threatened to kill me if I call police. It was horrible and hard to reminisce. I knew he tends to use violence before and I forgave him some times when

he just pinched my chin and dragged my arm. But this time it is too bad. So he took my phone away and restrain me in my room, not letting me go because I told him I would tell my TA about this whole thing after the final. So he just let me go to final after I promised I won't tell school and police.

When I go to two finals today (XXXX and XXXX, especially the latter), I really couldn't think and even hold pen (and I grabbed my bag but almost nothing in it) for the first thirty minutes. Now everything is done, he promised not to show up in my life nor my room, which is good because I don't want to take penalty on anyone. But I couldn't predict what my final shows out. It won't match my work for the whole semester. I don't expect any makeup chance. I just want to let you know since I barely know any American women here, am I doing wrong? Is there anything I can do to fix anything from academics or life?

Sorry for bothering.

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Scenario

The Title IX Office receives the following email from a responsible employee:

My name is Professor Jones. One of my students shared that they were raped last weekend at a party by another student. They don't want the school starting an investigation, and so I am not going to share their name or the details with you. They are thinking about talking to the police but are not sure who to contact. Can you please provide me with information that I can share with the student?

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02 Complainant Intake & Supportive Measures

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Initial Meeting with the Complainant

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available support
- Options for reporting
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps

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Supportive Measures

- Non-Disciplinary
- Non-Punitive
- As appropriate and reasonably available
- Confidential
- Designed to restore or preserve equal access
- May not unreasonably burden the other party

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Examples of Supportive Measures

- Assistance obtaining access to counseling, advocacy, or medical services;
- Assistance obtaining access to academic support and requesting academic accommodations;
- Changes in class schedules;
- Assistance requesting changes in work schedules, job assignments, or other work accommodations;
- Changes in campus housing;
- Safety escorts;
- Leaves of absence;
- Mutual restrictions on contact between the Parties (“No-contact” orders).

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“Mutual Restrictions On Contact Between the Parties”

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Post Meeting Tasks

- Document the meeting
- Send a summary email with resources, options, next steps
- Follow up
- Make connections
- Provide the support measures
- Document supportive measures requested, provided, and not provided. Where not provided, indicate why.

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03 Reporting Resolution - Remedies Based, Informal, or Formal

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How to Proceed?

- Remedies-based
 - No formal process
- Alternative/Informal
 - Signed agreement; Voluntary; What records?

- Formal/Investigation/Hearing
 - All requirements of 106.45

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03(a) Remedies Based Resolution

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Remedies Based Resolutions

- Supportive Measures
- Educational Conversations
- Targeted Education

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03(b) Formal Complaints & Notice Requirements

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Formal Complaint Filed

- By Complainant
- By the Title IX Coordinator

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Factors to Consider When Determining Whether to File a Formal Complaint

- Allegations of Violence
- Threats
- Use of weapons
- Serial predation

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Formal Complaint

A Formal Complaint must include:

- The Complainant's digital or physical signature, or an indication that the Complainant is the person filing the Formal Complaint;
- An allegation of Prohibited Conduct as defined under this Policy. This may include:
 - Where the incident(s) occurred; what incident(s) occurred; when the incident(s) occurred;
- Identity of Respondent, if known;
- A request for a resolution.

Formal Complaints may be made to the Title IX Coordinator by US Mail, email, or in person.

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Dismissing Complaints

Mandatory

- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

Discretionary

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info

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Can Proceed Under Other Policy

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Notice of Allegation Requirements

- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
 - the identities of the parties involved in the incident, if known,
 - the conduct allegedly constituting sexual harassment under §106.30,
 - and the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

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Notifying the Respondent

- FIRST—SAFETY
- Make sure support available
- Written Notification Meetings and Sufficient Time to Prepare

- Don't send at 5pm
- Don't send on a Friday
- How will you notify
- Consider impact of notification on Respondent

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Advisor of Choice

- The advisor can be anyone, including an attorney;
- Institutions cannot place restrictions on who can serve
- No training required
- Institution must provide advisor for the purposes of cross-examination, only.

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Initial Meeting with Respondent

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available supportive measures
- Supportive measures that provided to complainant that impact them
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps

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Post Meeting Tasks

- Document the meeting
- Send a summary email with resources, options, next steps
- Follow up
- Provide the supportive measures
- Make connections

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Formal Complaint Resolution

Informal Resolution

- Formal Complaint Required
- Parties must agree
- Can withdraw from process
- Alternate Resolution/Mediation
- No appeal

Formal Resolution

- Investigation and Adjudication process in compliance with Section 106.45

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03(c) Informal Resolution

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Informal Resolution Requirements

- Formal Complaint must be filed
- Participation in an informal resolution must be voluntary
- Must occur prior to resolution via a formal process
- Parties must be permitted to withdraw and seek formal resolution
- Voluntary, written consent to the informal resolution must be obtained
- Facilitators of informal resolution must be trained

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Informal Resolution Notice Requirements

- the allegations,
- the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process
- and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

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Facilitators of Informal Resolution as Witnesses

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Informal Resolution is prohibited to resolve allegations that an employee sexually harassed a student.

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03(d) Formal Resolution

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Procedural Requirements for Investigations

- Notice to both parties
- Equal opportunity to present evidence
- An advisor of choice
- Written notification of meetings, etc., and sufficient time to prepare
- Opportunity to review all evidence, and 10 days to submit a written response to the evidence prior to completion of the report
- Report summarizing relevant evidence and 10 day review of report prior to hearing

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Title IX Coordinator's Role

In the Investigation

- Title IX Coordinator is permitted to conduct the investigation, though this is not favored
- If conducting the investigation, do so in accordance with the applicable institutional policy
- If not conducting the investigation, may serve as a support to the investigators
- May serve as a resource to the parties

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Procedural Requirements for Hearings

- Must be live, but can be conducted remotely
- No Compelling participation
- Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters
- Cross-examination must be permitted and must be conducted by advisor of choice or provided by the institution
- Decision maker determines relevancy of questions and evidence offered
- Written decision must be issued that includes finding and sanction

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Title IX Coordinator's Role

In the Adjudication

- Title IX Coordinator may not serve as the decision maker
- May serve to support the decision maker(s)
- May participate in the hearing to provide logistical support to decision makers
- Responsible for effective implementation of remedies imposed

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Final Rule §106.45(b)(8)

"[I]nstitutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein."

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Title IX Coordinator's Role

In the Appeal

- Title IX Coordinator may not serve as an appellate reviewer
- May serve to support the appellate reviewer/panel
- May provide logistical support
- May coordinate implementation of appellate findings, where appropriate.
- Responsible for effective implementation of remedies imposed

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Putting it all together...

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Questions?

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