



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
- Implementing a revised Title IX Program
- The Title IX Coordinator's role in the Complaint Process



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
- 2011 Q&A and 2001 OCR guidance remain good to the extent consistent with Final Rule

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Roles

Title	Responsibilities	Training	Status
Title IX Coordinator	Intake reports and complaints, initiate formal complaint, supportive measures	Sexual harassment definition, scope of education program, how to conduct and investigation, grievance procedure (hearing, appeals informal resolution), impartiality	Must be institution employee Cannot serve as decision-maker
Investigator	Conduct a fair, objective and impartial investigation	Impartiality, how to conduct an investigation, issues of relevance, rape shield, report-writing	Employee or 3 rd party Cannot serve as decision-maker
Decision-maker	Evaluate evidence, determine relevancy during hearing, make and issue determination	Sexual harassment, hearing process, technology to be used in hearing, issues of relevance, evidence, rape shield	Employee or 3 rd party Cannot serve in any other capacity
Advisor(s)	Question opposing party and witnesses during hearing	None required	Party provided Employee or 3 rd party
Informal Resolution Facilitator	Conduct informal resolution process	Informal resolution process	Employee or 3 rd party

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

Implementing a Title IX Policy

- Title IX Coordinator responsibility
 - At least one employee
- Publication and Dissemination of Notice of Non-discrimination Based on Sex
- Publication and Dissemination of a “Prompt and Equitable Grievance Procedure” applicable to students and employees
- Publication of training materials (Title IX Coordinators, investigators, decision-makers, individuals who facilitate informal resolution process) must be posted to the website

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OCR Resources

- Webinar: Title IX Regulations Addressing Sexual Harassment
- OCR Blog
- Email OCR OPEN Center with questions
(T9questions@ed.gov)

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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
- Copy of grievance procedures and grievance process, including how to report or file a complaint and how the institution will respond
 - must be distributed to all prospective/current students and employees
- Anyone can report sex discrimination (including sexual harassment) even if they are not the victim by mail, telephone email or in person.

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Training

- Title IX Coordinator must ensure that Title IX “personnel” are trained on:
 - Definition of sexual harassment in the Final Rule
 - Scope of the institution’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.

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Notice

- Title IX Coordinator must ensure that the institution responds when:
 - The institution has actual knowledge of sexual harassment
 - That occurred within the institution's education program or activity
 - Against a person in the United States (no study abroad programs)
- Institution violates Title IX when its response to sexual harassment is clearly unreasonable in light of the known circumstances (deliberate indifference)

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Reporters

- Identify which employees must, may or must only with Complainant's consent report to the Title IX Coordinator
- Triggers notice

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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

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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

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Supportive Measures

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

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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

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Policy Considerations

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

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TITLE IX COORDINATOR ROLE IN THE COMPLAINT PROCESS

Formal Complaint

- Must ensure that all formal complaints are investigated
- A formal complaint is signed by a Complainant or Title IX Coordinator alleging sexual harassment against a Respondent, requesting an investigation
- Complainant must be a current or prospective student or employee
- Defer to Complainant's wishes as to whether to pursue an investigation
- Title IX Coordinator can sign a complaint to initiate an investigation if they determine that not pursuing would be deliberately indifferent or that not pursuing a claim would be harmful to the campus community

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Complainant

- Must be alleged victim unless parent or legal guardian has a legal right to act on behalf
- Note that any person may report sex discrimination, including sexual harassment to the Title IX Coordinator
- Person reporting does not have to be the victim of conduct that could constitute sex discrimination or sexual harassment
- Only a complainant may file a formal complaint that initiates a Title IX grievance procedure

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Complaint Dismissal

- The institution *must* dismiss a Formal Complaint if:
 - Allegations do not meet the definition of sexual harassment
 - Did not occur in the institution's education program or activity against a person in the United States
- The institution *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 institution
 - If specific circumstances prevent the institution from gathering sufficient evidence to reach a determination.

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Complaint Dismissal

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

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Informal Resolution

- Discretionary—can be used so long as both parties give voluntary, informed, written consent to attempt informal resolution
- Any person who facilitates an informal resolution must be trained
- An institution may not require a waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment as a condition of enrollment, employment, or enjoyment of any other right

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Informal Resolution

- Can only be utilized when there is a formal complaint
- At any time before resolution, a party can withdraw from the informal resolution process and resume the grievance process
- Cannot be used to resolve allegations that an employee sexually harassed a student

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Investigations

- Title IX Coordinator can investigate
- Must be free from conflicts of interest and bias against Complainant or Respondent
- Institutions can reserve the right to have a third party investigate

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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 institution must provide, without charge, an advisor of the institution's choice
- An institution-appointed advisor is not required to be an attorney
- Only advisors may conduct cross-examination of witnesses

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Investigation

- Impartial, fair and objective
- Burden on the institution
- No gag-orders
- Right to an advisor
- Dismissal
- Written notice with sufficient time to prepare
- Opportunity to inspect and respond to evidence
- Investigative report

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Investigation

- Send notice to parties of the allegations upon receipt of a formal complaint
- Send notice of any investigative interviews, meetings or hearings
- Provide both parties an equal opportunity for the parties to present fact and expert witnesses and other evidence
- Institutions may consolidate formal complaints where the allegations arise out of the same facts

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Investigation

- Send the parties evidence directly related to the allegations at least 10 days prior to any hearing for the parties to review and respond
- Complaints against multiple respondents or by multiple complainants may be consolidated
- May consolidate investigations where the complaints arise out of the same facts or circumstances
- Must send the parties an investigative report that fairly summarizes relevant evidence at least 10 days prior to a hearing

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Live Hearings

- Postsecondary institutions must provide a live hearing
- Title IX Coordinator must ensure these requirements are met
- Requirements for a live hearing include:
 - Opportunity for parties' advisors to examine and cross-examine witnesses, including challenging the credibility of witnesses
 - Examinations must be direct, oral, and in real time
 - Parties may be required to stay in separate rooms with a live video+audio connection
 - Only relevant questions may be asked; prior sexual conduct is not relevant

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Live Hearings

- Elementary and secondary schools have different hearing requirements:
 - No live hearing required
 - Each party must have opportunity to submit written questions of witnesses
 - Answers from witnesses must be provided to parties
 - Prior sexual conduct of complainant is not relevant

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Live Hearings

- Live hearings are conducted by an appointed decision-maker (can be more than one person)
- Title IX Coordinator cannot be the decision-maker
- Decision-maker must receive specific training
- Decision-maker must issue a written determination of responsibility

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Determination

- Written determination of responsibility must:
 - Use published standard of evidence
 - Identify the allegations constituting sexual harassment
 - Describe procedure from formal complaint through hearings
 - Make findings of fact and conclusions
 - Provide a rationale for the outcome on each allegation and imposition of any sanctions
 - State the procedures and allowable bases for any appeal
 - Be provided simultaneously to both parties

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Remedies

- Title IX Coordinator is responsible for implementation
- Required to be provided to a Complainant when a respondent is found responsible
- Must be designed to maintain Complainant's equal access to education and may include supportive measures
- Remedies do not need to be non-disciplinary or non-punitive and do not need avoid burdening the respondent.

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Appeals

- Policy must provide for appeals for both parties.
- The bases for an appeal must include:
 - procedural irregularity affected the outcome of the matter
 - newly discovered evidence that could affect the outcome of the matter
 - Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter
- Institutions may offer additional bases for appeal that apply equally to both parties

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Retaliation

- Title IX Coordinator must ensure that the institution'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

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Retaliation

- Retaliation complaints may use the same grievance process as sexual harassment complaints
- Institution 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

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