

Title IX Coordinator Training

Module 5: Review of Institutional Policies:
Complaint Handling, Student Codes,
and More!

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Pieces Of One Puzzle



- Statement of Non-Discrimination
- Anti-Sexual Harassment Policy
- Student Code
- Employee Handbook
- Title IX Resources

Non-Discrimination

“The University does not discriminate on the basis of race, creed, color, religion, **sex**, sexual orientation, gender identity and/or expression, disability, age, marital status, national origin or Vietnam-era/disabled veteran, or on any other basis prohibited by federal or state law, in employment or in the application, admission, operation, participation, access and treatment of employees and students, in any of the University’s programs and activities.”

Anti-Sexual Harassment Policy

"It is the policy of the University that no member of the community may sexually harass another. Sexual harassment is defined as unwelcome sexual conduct (including sexual assault), requests for sexual favors, and/or physical, verbal or written conduct of a sexual nature when:

(1) Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment, education, or participation in University programs or activities, or

(2) Submission to or rejection of such conduct by an individual is used as a basis for decisions pertaining to an individual's employment, education, or participation in University programs or activities; or

Sexual Harassment Policy

(3) Such speech or conduct is directed against another and is abusive or humiliating and persists after the objection of the person targeted by the speech or conduct, or

(4) Such conduct would be regarded by a reasonable person as creating an intimidating, hostile or offensive environment that substantially interferes with an individual's work, education, or participation in University programs or activities."



Checklist For Policy Compliance

Do my institution's policies...



- Provide notice of the grievance procedures, including where a complaint may be filed?
- Make it clear that they apply to complaints alleging harassment by employees, other students or third parties?
- Allow for adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to provide witnesses and other evidence?
- Include designated and reasonably prompt time frames for the major stages of the complaint process?
- Ensure that the parties receive written notice of the outcome of the complaint?
- Include an assurance that we will take steps to prevent recurrence of any harassment, and to correct its discriminatory effects on the complainant and others if appropriate?

Do my institution's policies...



... make it clear that they apply to complaints alleging harassment by employees, other students or third parties?

IF/THEN

- For example, manner of processing complaint may vary, but identity of harasser does not change duty to address complaint.

Location and Control

- FN 3 of the 2017 Guidance provides that schools have a duty to address off-campus harassment only to the extent that they have control over the “harasser and the environment in which the harassment occurs.” (citing Oklahoma State University determination letter at 2).
- However, OCR further states that “[s]chools are responsible for redressing a hostile environment that occurs on campus even if it relates to off campus activities.”

Do my institution’s policies...

... allow for adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to provide witnesses and other evidence?

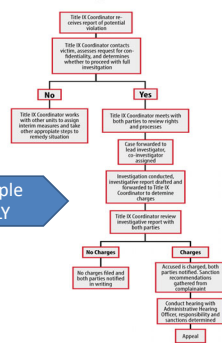


Resolution Framework:

- No one resolution process is mandated, although there is a good amount of discussion on the topic.
- Flow charts are especially helpful to ensure community members understand your school’s process.

Example ONLY

Title IX Investigation Process



The Key to Compliance

Must have grievance procedures that allow for prompt and **equitable** resolution of complaints of sexual discrimination, including sexual misconduct.

“Any rights or opportunities that a school makes available to one party during the investigation should be made available to the other party on equal terms.”

(2017 Q&A Q.6).

Informal Resolution of Complaints

- In 2001, OCR stated that “in some cases, such as alleged sexual assaults, mediation will not be appropriate even on a voluntary basis.” Revised Guidance at 22.
- In 2017, OCR stated that “if a school determines that a particular Title IX complaint is appropriate” to be resolved informally, it may do so provided the parties are informed of their options and agree to participate voluntarily. Interim Q&A Q.7

Equality In Informal Resolution

- Informal and formal options are available, but informal processes are not appropriate for some cases, such as those involving alleged sexual assault.
- If mediation is appropriate and elected, it can be ended at any time in favor of the formal process.

Equity in the Resolution Process

- Per 2017 Interim Guidance:
 - Burden on School and not the Parties to gather sufficient evidence
 - Impartial investigation led by official free of real or reasonably perceived bias
 - Trained investigators
 - Consideration of credibility, inculpatory as well as exculpatory evidence in light of unique circumstances of each case

Written Notice of Charges

- Once the decision is made to open an investigation, a “school should provide written notice of the allegations constituting a potential violation of the school’s sexual misconduct policy.” 2017 Interim Q&A at Q6.
- Sufficient Details
 - Identifies of the parties
 - Specific section of the school policy allegedly violated
 - Precise description of the conduct in question
 - Time and location

Advisors

- The parties must have equal opportunity to select an advisor of their choice.
- If dating or domestic violence, sexual assault or stalking, parties entitled to advisor of their choice.
- School may reasonably limit participation of advisor, provided such limits are imposed equitably.

Equality In the Resolution Process, including Investigations and Hearings

- Equitable and sufficient time to prepare for meetings, etc.
- Equitable and timely access to all information that will be used during any informal or formal disciplinary meetings, including the investigation report, consistent with FERPA and other confidentiality issues.
- Parties must have an equal opportunity to present relevant witnesses and other evidence.
- Each party must be afforded the same right to cross examine or submit questions to be asked.
- Parties should be provided an opportunity to respond in writing to the investigation report in advance of any decision of responsibility and/or at a live hearing to decide responsibility.

Standard of Proof

- Fact-finders **must** use one of the following two standards of proof:
 - The preponderance of the evidence standard, or
 - A clear and convincing evidence standard.
- The standard should be articulated clearly.
- Stay tuned: The standard may change.
- **Footnote**¹⁹
OCR: should be consistent with conduct case standards.

Documentation

- Maintain documentation of all proceedings, which may include findings of fact, transcripts or audio recordings.

“Documentation of Proceedings”

- a. Name and sex of the complainant or alleged victim.
- b. A description of the allegation, including dates, times, and individuals involved.
- c. The date the complaint or other report was made.
- d. The dates on which interviews were conducted.
- e. The names and sex of all known witnesses to the alleged incident.
- f. The dates on which any relevant documentary evidence was obtained.

“Documentation of Proceedings”

- g. Any written statements.
- h. The date on which the institution deferred its process to the police and then resumed its disciplinary process.
- i. The hearing outcome.
- j. The institution’s response, including any interim and permanent steps taken with respect to the complainant and the respondent; and
- k. A description of action taken to prevent recurrence of any harassing incidents.

Appeals

- OCR recognizes that schools have the right to determine whether or not to provide an appeal.
- Where provided, schools have the right to reserve the appeal for the respondent only, or to provide it to both parties equitably.

Do my institution's policies...

... include designated and reasonably prompt time frames for the major stages of the complaint process?



The Key to Compliance



Must have grievance procedures that allow for **prompt** and equitable resolution of complaints.

"Designated and Reasonably Prompt Time Frames"

- 2017 Interim Guidance: "There is no fixed time frame under which a school must complete a Title IX investigation.
- OCR will evaluate as school's good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.

WHAT DOES THIS MEAN?

“Designated and Reasonably Prompt Time Frames”



- Specify time frames for all major stages:
 - full investigation / hearing
 - response to parties regarding the outcome of the complaint
 - Appeal
- Include language regarding concurrent investigations by law enforcement.
- And still a best practice to provide parties with periodic status updates during investigation process.

Do my institution’s policies...

... ensure that the parties receive written notice of the outcome of the complaint?




Notice Of Outcome

- | | |
|---|---|
| <p>Title IX per OCR</p> <ul style="list-style-type: none">• OCR recommends concurrent written notice of the outcome of any disciplinary proceedings to complaining and responding parties, including notice to the complaining party of those remedial or disciplinary measures directly related to the reporting party. | <p>Clery Act</p> <ul style="list-style-type: none">• Clery dating or domestic violence, sexual assault, and stalking case findings require simultaneous written notification to both parties, a description of the sanctions, rationale, appeal rights, and any changes to the result when it is finalized. This notice must include the rationale for the findings. |
|---|---|

Do my institution's policies...

... include an assurance that we will take steps to prevent recurrence of any harassment, and to correct its discriminatory effects on the complainant and others where appropriate?



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The Complainant

- Ensure the parties aren't in the same classes.
- Move the parties to different residence halls.
- Prevent and address retaliation.
- Advise the complainant as to the option of filing a criminal complaint.
- **REMEMBER:** The obligation to provide such support to the Complainant is not dependent on a finding of "responsible" regarding, and sanctions imposed against, the Respondent.

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The Complainant


- Counseling and mental health services.
- Medical services.
- Academic support services, including tutoring.
- Course withdrawal.

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**The Campus Community:
Prevention / Remediation**

- Educate, educate, educate.
- Offer counseling, health, mental health and comprehensive victim services to all students affected by sexual harassment.
- Focused training for all employees who interact with students regularly on recognizing and appropriately addressing sexual harassment.

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**The Campus Community:
Prevention / Remediation**


- Focused training for certain student groups.
- Regular meetings between the Title IX Coordinator and law enforcement and counseling services.
- Create a committee of students and school officials to identify strategies, weak spots, and red flags.
- Reissue the institution's policies.

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Next Module ...

Review of Institutional Policies – Part II

- Employees
- Parents and the media
- FERPA and the Clery Act
- Minors
- Notice
- Training

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Note

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