

Title IX Coordinator Training

Module 6: Review of Institutional Policies:
FERPA, Other Constituencies,
Employees and Notice

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FERPA

- Protects education records and information derived from education records.
- Consent generally required prior to disclosure.
- Allows student to access his/her own education records.

FERPA and Title IX

- If a conflict, Title IX wins. Or at least OCR says so:
 - “FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions.” 2001 DCL, page vii.

FERPA and TITLE IX

- REMEMBER:
 - Law enforcement records (created by campus law enforcement, and for use in their own investigation) are not education records.
 - Medical and mental health treatment records created by professionals or “paraprofessionals” are not education records. But, may generally only be disclosed for treatment purposes.

FERPA and Title IX

Q: We must give the complainant, the respondent and “appropriate officials” “timely and equal access” to *any* information that will be used during disciplinary meetings and hearings. Couldn’t that cause a FERPA problem?

A: Title IX, Clery and the courts emphasize the importance of making certain the respondent has the opportunity to respond fully to the allegations. Title IX will only override FERPA where there is a direct conflict that would interfere with an institution’s Title IX obligations.

** BUT REMEMBER: That historical information can be shared with other school officials with a “legitimate educational interest” – including those on a disciplinary committee.

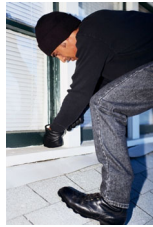
FERPA and Title IX

- All sexual harassment:
 - FERPA permits an institution to disclose to the harassed student information about the sanction imposed when the sanction directly relates to the harassed student.
- Violence or non-forcible sex offense:
 - FERPA permits all sanctions to be disclosed to the complainant.
 - FERPA further permits disclosure to “anyone.”

FERPA & Clery

- Disciplinary outcomes
 - Simultaneous notification to complainant and respondent
 - Result of proceeding from allegations of dating violence, domestic violence, sexual assault and any subsequent changes
 - Rationale
- Timely warnings
 - FERPA Health & Safety Emergencies

Reporting Under Clery and Title IX



Clery Act and Title IX

Briefly, has four key components:

1. Disclosure of policies regarding campus safety.
2. Timely warning of certain crimes that might represent an ongoing threat.
3. Compilation and maintenance of crime information.
4. Reporting of crime information.

Clery Act and Title IX

- If an alleged crime of sexual violence is reported to a “campus security authority”, it must be reported and recorded.
- Campus security authority is not just campus police. Includes any official “with significant responsibility for student and campus activities” – residence hall advisors, etc.

** Note that pastoral counselors and professional mental health counselors on campus are *exempt from disclosure requirement*.

Clery Act and Title IX

- So ... under DCL, receipt of information by a “campus security authority” about sexual violence will not just prompt a Title IX investigation but will also prompt Clery Act reporting.

Clery Act and Title IX

- Little known fact:
 - FERPA limitations on re-disclosure of information do not apply to information required to be disclosed under Clery. As a result, institutions cannot require a complainant to abide by a nondisclosure agreement.

Parents, the Media and Other Constituencies



Parents, the Media and Other Constituencies

- Certain incidents (e.g. sexual violence) will garner attention from third parties, including the media, parents, alumni, donors, and trustees.
- Stick to institutional policies with regard to parent involvement (including as advisor of choice).
- Rely on Communications Director.
 - FERPA
 - Defamation
 - Breach of contract

Parents, the Media and Other Constituencies

- Plan now
 - Designate a team of decision makers who will respond to outside constituencies in the event of a high profile situation.
 - Develop talking points for responding to anticipated questions/issues.
 - Meet with Communications Director

Minors and Title IX



Minors and Title IX

Minors may be:

- Enrolled as students
- Visiting university students
- Participating in a sports camp, enrichment programs, music programs, mentoring or tutoring programs
- Using facilities (pools, playing fields, or libraries) open to the public

Don't Forget Your Employees



Policy Compliance – Don't Forget Your Employees

- Collective bargaining obligations
- Employee disciplinary procedures
- Title IX Coordinator should be communicating with EEO Officer (may be the same person)
- Clery requirements apply equally to employees

Title IX Notices



Notice of Nondiscrimination

- Post and disseminate a notice of nondiscrimination stating that the institution does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it not to do so.
 - Widely distributed to students, employees and applicants – posted on website, available throughout campus, and included in printed publications of general distribution.
- Specifically identify the Title IX Coordinator.

Notice of Nondiscrimination

- Notify students and employees of name, office location, telephone number and email address of its Title IX Coordinator(s).
- Title IX Regulations require each institution to post a notice that it does not discriminate on the basis of sex and directing questions to the Title IX Coordinator or OCR.
- Must be on website.
- May be associated with position.

Notice of Grievance Procedures

- Procedures for resolving complaints should be:
 - easily understood, easily located, and widely distributed.
 - prominently posted on the institution's website, sent electronically to all members of the campus community, available throughout campus, and summarized in or attached to major publications (e.g. student handbooks).

Next Module...



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