

STAUTZENBERGER COLLEGES AND ROCKFORD CAREER COLLEGE TITLE IX TRAINING



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Overview



- ◆ **Themes for New Title Regulations**
- ◆ **Title IX Background/Coverage**
- ◆ **Definitions**
- ◆ **Grievance Procedures**
 - ◆ Initial Response
 - ◆ Investigation
 - ◆ Hearing
 - ◆ Appeal
- ◆ **Timing**
- ◆ **Informal Resolution**
- ◆ **Record Keeping**

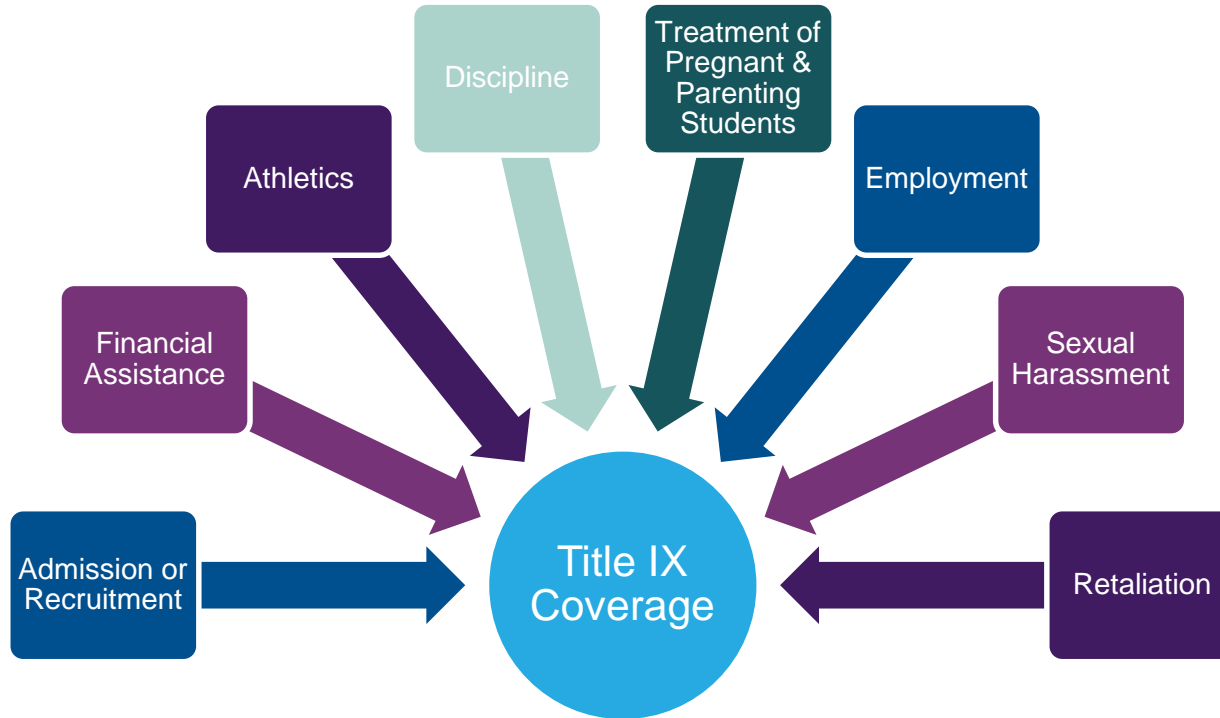
Title IX Statute



Title IX Statute (20 U.S.C. §§ 1681–1688)

- "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."

Every Aspect of the Institution



EXTERNAL COMPLAINTS



Lawsuit: Suing the school in court and seeking monetary damages or injunctive or declaratory relief

AND/OR

OCR Complaint: Filing an administrative complaint, a grievance with U.S. Dept. of Ed.

Definitions



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).

Do the Math



Actual Knowledge + Sexual Harassment +
Education Program or Activity + Formal Complaint

=

Grievance Procedures

(If any of the elements are missing, the complaint
cannot proceed and must be dismissed)

Actual Knowledge



- ◆ Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official with the authority to institute corrective measures

Education Program or Activity



- ◆ **Education program or activity: locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs.**
 - ◆ Includes: classrooms, workplaces, school sponsored events, official clubs and associations
 - ◆ Does Not Include: private social events, dating outside of the College community, etc.

Key Points



- ◆ Applies to students and staff
- ◆ The definition is strict and narrow
- ◆ Can overlap with other employment laws (e.g., Title VII)
- ◆ Triggers Grievance Procedures

Grievance Procedures



- ◆ The College adopted Grievance Procedures to ensure compliance with Title IX
 - ◆ Be sure to review and follow the Procedures whenever you receive a complaint that may fall under Title IX
 - ◆ Do not be afraid to ask questions

Key Grievance Process Terms



- ◆ “Title IX Coordinator” is the person responsible for ensuring compliance with Title IX.
- ◆ “Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment, discrimination, or retaliation.
- ◆ “Respondent” means the individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment, discrimination, or retaliation.
- ◆ “Formal Complaint” means a document signed by the Complainant or signed by the Title IX Coordinator alleging Sexual Harassment, discrimination, or retaliation in violation of Title IX.
- ◆ “Grievance Procedures” means the set of procedures adopted by the College to ensure compliance with the Title IX Policy.
- ◆ “Advisor” means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- ◆ “Investigator” is the person(s) charged by the College with gathering evidence and preparing an investigative report.
- ◆ “Hearing Officer” is the person responsible for considering the investigative report and the evidence presented at the hearing and make a finding of responsibility for any Policy violations

Someone Complains. What Next?



- ◆ Initial Assessment
 - ◆ Is anyone in danger?
 - ◆ What sort of Supportive Measures can you offer?
 - ◆ Referrals to sexual violence support services, counseling, interim class/schedule/work safety plans
 - ◆ Explain the Grievance Process and their options

Formal Complaint



- ◆ Can be filed by the Complainant or Title IX Coordinator requesting an investigation
- ◆ Initiates the Grievance Process
- ◆ Must be signed

Formal Complaint



- ◆ Must be Dismissed if...
 - ◆ Conduct falls outside the definition of Sexual Harassment
 - ◆ Did not occur in education program or activity
 - ◆ Did not occur against a person in the United States

Formal Complaint



- ◆ May be Dismissed if...
 - ◆ Complainant informs the Title IX Coordinator that they want to withdraw, or
 - ◆ Respondent is no longer employed or enrolled, or
 - ◆ The College is unable to gather evidence sufficient to reach a determination as to the Formal Complaint

Notice to Respondent



◆ Notice of allegations:

- “Sufficient details” means: identities of the parties involved in the incident, the conduct allegedly constituting sexual harassment under §160.30, and the date and location of the alleged incident.
- Notice must include: (1) “presumed not responsible” statement, (2) right to an advisor, (3) reference to code of conduct that prohibits knowingly making false statements.
- New evidence, new notice.

Investigation



1

- Investigator must gather evidence by interviewing all relevant witness and collecting documentation

2

- All parties have the right to present evidence and suggest relevant witnesses

3

- Parties have a right to have an Advisor present during any interviews or meetings.

4

- No gag orders. The college cannot direct people to stay silent.

5

- The Parties have the right to review the Investigative Report before it becomes final

6

- The Investigative Report must fairly summarize the relevant evidence and be finalized at least 10 days before a hearing

Summary of Investigation



- ◆ Provide notice of the allegations to the Parties before any interview with sufficient time to prepare
- ◆ Provide all evidence obtained to both Parties
- ◆ Provide an opportunity to the Parties to review and submit additional evidence before finalizing the Investigative Report
- ◆ Provide the final Investigative Report at least 10 days before the hearing

Live Hearing



- ◆ Parties must have Advisors
- ◆ Advisors can cross-examine witnesses, including the Parties
- ◆ The Hearing Officer controls the hearing, makes determinations regarding what evidence may be presented (with explanations of why/why not), and makes a finding regarding responsibility and sanctions

Live Hearing



- ◆ What is NOT Relevant
 - ◆ Prior sexual behavior (with the limited exception to show the Respondent is not the transgressor or if consent is an issue)
 - ◆ Prior consent to a sexual act is not evidence of continued consent!
 - ◆ If a Party or witness does not submit to cross-examination, the Hearing Officer must not rely on any statement of that Party or witness in reaching a determination of responsibility

Live Hearing



Written Decision Must Include:

- ◆ Identification of the allegations potentially constituting sexual harassment as defined in §106.30;
- ◆ A description of the procedural steps taken from the receipt of the formal complaint through the determination,
- ◆ Findings of fact supporting the determination;
- ◆ Conclusions regarding the application of the Policy to the facts;
- ◆ A statement of, and rationale for, the result as to each allegation
- ◆ The recipient's procedures and permissible bases for the complainant and respondent to appeal.

Appeal



- ◆ **The Complainant and Respondent have the right to appeal final determination of responsibility and/or the resulting sanction based on the limited grounds of:**
 - ◆ **Substantial procedural irregularity that materially affected the outcome;**
 - ◆ **Material, new evidence not reasonably available at the time of the hearing; and/or**
 - ◆ **Evidence that the Title IX Coordinator or hearing officer had a conflict of interest that materially affected the outcome.**

Appeal



- ◆ Procedural Requirements
 - ◆ Notice to all Parties
 - ◆ Campus President is the decision maker
 - ◆ All Parties must have a reasonable opportunity to submit a written statement challenging or supporting the decision

Time Frame



- ◆ 60 Days from Formal Complaint to end of Live Hearing
- ◆ Can be extended for good cause
- ◆ Document everything, including any reasons for delay

Withdrawal of Formal Complaint



The Complainant may request to withdraw a Complaint at any time. The College reserves the right to make a determination whether to approve or deny this request, but will strongly consider the Complainant's wishes

Informal Resolution



- ◆ Title IX Coordinator may resolve reports informally and appropriately, based on the circumstances. Informal resolutions generally are pursued when the Complainant, having been fully informed of all available options, has explicitly made that choice
- ◆ An informal resolution process is voluntary, and a complainant can ask to end the informal resolution process at any time before its completion. If an informal resolution process is ended by request, any information obtained may be used in a subsequent formal resolution process and hearing.
- ◆ Once a Formal Complaint has been resolved through an informal resolution process, the matter will be closed

Recordkeeping



- ◆ For 7 years, maintain:
 - ◆ Each Sexual Harassment and Retaliation investigation, including any Final Decision regarding responsibility, and any recording or transcript required under federal regulation;
 - ◆ Any disciplinary sanctions imposed on the Respondent;
 - ◆ Any remedies provided to the Complainant designed to restore or preserve equal access to the College's education program or activity;
 - ◆ Any appeal and the result therefrom;
 - ◆ Any Informal Resolution and the result therefrom;
 - ◆ All materials used to train Title IX Coordinators, investigators, hearing officers, and any person who facilitates an informal resolution process. The College will make these training materials publicly available on the College website; and
 - ◆ Any actions, including any Supportive Measures, taken in response to a report or Formal Complaint.

Thank You



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