

“TITLE IX : BEYOND EQUITY IN OPPORTUNITY – SEXUAL MISCONDUCT ISSUES”

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Title IX

“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 educational program or activity receiving federal financial assistance.”

Title IX of the Education Amendments of 1972

Implementing Regulations at:

20 U.S.C. § 1681 & 34 C.F.R. Part 106

Title IX - Athletics

“No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis”

34 C.F.R. Part 106 §106.41

Title IX

- Title IX of the Education Amendments of 1972 is a federal law intended to end sex discrimination in all areas of education
- Title IX made non-discrimination based on gender a condition of participation in federally funded education programs
- Title IX applies to all recipients of federal funds – both public and private institutions
- It applies to educational program equity, such as in athletics, and also to sexual harassment and sexual assault

Role Of OCR & Title IX

- The Office for Civil Rights (OCR) is responsible for establishing the compliance standards to be applied in investigations and enforcement of Title IX regarding sexual harassment.
- OCR requires that once a school has notice of possible sexual harassment of a student, the school should take immediate and appropriate steps to:
 - Investigate what occurred
 - Take prompt and effective action to end the harassment
 - Remedy the effects
 - Prevent the recurrence.

Regulatory Standards

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- If the institution has notice of sexual misconduct, these four steps are the school's responsibility whether or not the student who was harassed makes a formal complaint or otherwise asks a school to take action
- OCR acknowledges that there may be circumstances where the complainant requests confidentiality or refuses to participate, thus, the school's ability to take action may be limited...
- BUT - the school is still required to take all reasonable steps to investigate and respond

Notice Standard

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- Because OCR operates from a different premise than a civil lawsuit for monetary damages, it uses a “constructive notice” standard that is broader than the notice standard used by the courts – which is “actual notice”
- This brings under its ambit all complaints about which the university knew, or should have known
- It requires that a university may be held accountable for harassment of students (even by other students) if any person perceived to be a responsible school employee was put on notice and took no corrective action

Responsible Employee

- A responsible employee includes any employee who:
 - ☞ Has the authority to take action to address the harassment
 - ☞ Has the duty to report harassment or other student or employee misconduct to appropriate school officials
 - ☞ **OR** someone a student could reasonably believe has such authority or responsibility.

Training For Responsible Employee

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Colleges and universities should ensure that employees are trained so that:

- ❑ Those with authority to address harassment know how to respond appropriately
- ❑ Other responsible employees know that they are obligated to report harassment to appropriate officials
- ❑ Essential Topics for training
 - ❑ Knowledge of institutional and community resources
 - ❑ Information regarding reporting
 - ❑ Confidentiality requirements
 - ❑ Importance of remediation

BASIC TRAINING TOPICS

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- ❑ The College's Sexual Harassment Policy for student-student harassment
- ❑ The College's Sexual Harassment Policy for staff-student harassment
- ❑ The Student Code of Conduct's Sexual Assault Policy
- ❑ The Departmental/College expectation for reporting incidents of sexual assault and harassment
 - ❑ Who to tell
 - ❑ How to tell
 - ❑ When to tell
 - ❑ What does confidentiality mean? Who has it?

The IX Commandments

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Thorough	Reliable	Impartial	Investigation
Prompt	Effective	Equitable	Process
End the Discrimination	Prevent its Recurrence	Remedy the effects upon the victim & community	Remedies

Remedies Under Title IX

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- An individual may assert a Title IX claim against the institution by:

(1) Sue the institution in court and seek money damages or injunctive or declaratory relief

And/Or

(2) File an administrative complaint, a grievance with U.S. Dept of Ed Office Of Civil Rights (OCR)

Civil Law Suits v. Administrative Action & Title IX

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Law Suit

- ❑ **File in Federal Court**
- ❑ **Monetary damages, injunction**
- ❑ **Requires:**
 - ❑ Actual Notice
 - ❑ Employee with authority to take action
 - ❑ Deliberate Indifference

Administrative Action

- ❑ **Initiated by OCR**
- ❑ **Voluntary compliance or findings**
- ❑ **Requires:**
 - ❑ Actual OR Constructive Notice (“knew or should have known”)
 - ❑ Investigate – End harassment – Remedy Impact – Prevent recurrence

Thank You!!
Questions??

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