



**Title IX Coordinator Training
Online Course: Fundamentals of
the August 2020 Regulatory
Requirements**

**Module 3: Policy and Training
Obligations**

Amy C. Foerster, Partner, Troutman Pepper Hamilton Sanders
LLP
Melinda Grier, Melinda Grier Consulting PC
Janet P. Judge, Partner, Holland & Knight LLP


Disclaimer: Update of the information presented in this course is subject to change without notice.

Title IX Coordinator(s) §106.8

Designation:

- Regulations refer to Title IX Coordinator in multiple ways, suggesting that it may be one or more persons.
 - “At least one employee”
- Must be referred to as the Title IX Coordinator.
- Notification provisions apply to all personnel with this responsibility.

Any person may report sex discrimination, including sexual harassment to the Title IX Coordinator(s) at any time, day or night, in person, by mail, by email, by phone, or by any other means that results in notice (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual discrimination or sexual harassment).



NACUA
National Association of College and University Attorneys



**Policy versus
Grievance Process
versus Grievance
Procedures**

Dissemination of Policy §106.8

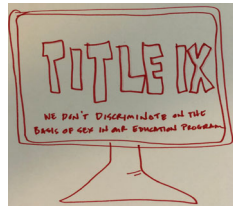
- Title IX Coordinator(s) contact info:
 - Name or Title, Office Address, Email, Telephone Number.
- Website.
- Handbook or Catalog.
- School must not use or distribute a publication stating that the school treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX.

Required Notification Recipients
Applicants: Admission & Employment Students Employees Unions Professional Orgs with CBA/PAs
<u>Discuss: Parents/Legal Guardians*</u>

Dissemination of Policy §106.8

Notification of Policy: Elements

- School does not discriminate on the basis of sex in its education program or activity.
- School is required by Title IX not to discriminate.
- School's nondiscrimination policy extends to admission and employment.
- Inquiries may be directed to the Title IX Coordinator, to the Assistant Secretary, or both.
- How to file a complaint language.*



Adoption of Grievance Procedures §106.8

- Adopt and publish:
 - grievance procedures that provide for the prompt and equitable resolution of student *and* employee complaints alleging *any* action prohibited under Title IX.
 - a grievance process that complies with §106.45 for formal complaints as defined in §106.30.

Notice
WHAT: Notice of the school's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the school will respond.
TO WHOM: applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the school.

Policy Decision Point: Framework

All-in-One Policy

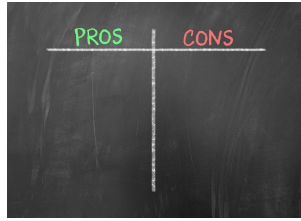
1. Treat all the Same; or
2. Decision Trees

Two Policies: If not TIX, then ...

1. Title IX Regulation+
2. Everything Else

Three plus:

1. TIX Regulation Conduct
2. Other Sexual Misconduct
3. Other Prohibited Conduct



Please Note:

“Nothing in this part may be read in derogation of any individual’s rights under Title VII of the Civil Rights Act of 1964”

Where there is a conflict between State or local law and Title IX regulations, Title IX regulations win.



Definitions (Suggestions):

- Actual Knowledge
- Complainant/Respondent
- Advisor
- Consent
- Formal Complaint
- Prohibited Conduct
 - Sexual Harassment
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking
- Supportive Measures/Remedial Measures
- Disciplinary Measures
- Title IX Coordinator
- Officials with Authority/Required Reporters
- Confidential Resources
- Evidence
 - Standard of Evidence
 - Directly Related
 - Relevant
- Deliberate Indifference
- Education Program or Activity
- Informal Resolution
- Emergency Removal

Policy Elements:

- Non-Discrimination Policy Language
- Filing a Complaint:
 - Title IX Coordinator: Office Address, Email Address, Telephone Number
- Response:
 - Supportive Measures, including Confidentiality (§106.30), as distinguished from Remedies.
- Emergency Removals: §106.44(c)



Grievance Process: Formal Complaints

- Equitable
- Formal Complaint/Actual Knowledge
- Jurisdictional Issues:
 - Dismissal of a Formal Complaint
 - Written Notices/Appeal
 - Option for Other Proceedings
 - Consolidation of a Formal Complaint
 - Investigations of a Formal Complaint
- Emergency Removals
- Notice of Allegations
- Supportive Measures
- Advisor of Choice/Guidelines



Grievance Process: Formal Complaints

- Informal Resolution Options
- No Conflict Provisions
- Range of Equitable Supportive Measures
- Investigations
 - Burden of Proof
 - Evidence/Rape Shield
 - Notice
 - Access to Evidence
 - Access to Investigative Report
- Confidentiality Provision



Grievance Process: Formal Complaints

- Hearings
 - Venue: Same or Separate Rooms
 - Decorum Provisions
 - Access to Evidence
 - Relevance Determinations
 - Standard of Evidence
 - Cross Examination Guidelines
 - Expert Witnesses
 - Recording
- Determinations of Responsibility/Notice
- Determination of Remedies/Sanctions, where appropriate
- Appeals



Grievance Process: Formal Complaints

- Possible Remedies/Sanctions
- Non-Retaliation
- Confidentiality/First Amendment
- Reasonably Prompt Timeframes
 - Short-Term, Good Cause Delays
 - Extensions of Time
- Recordkeeping
- Materially False Statements
- Training



TRAINING

Title IX Personnel



Training

A school must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on:

- the definition of sexual harassment,
- the scope of the recipient's education program or activity,
- how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable.

Title IX Personnel:

- How to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest and bias.
- Including: sex, race, ethnicity, sexual orientation, gender identity, disability or immigration status, financial ability, or other characteristic.

**Implicit bias training not required.

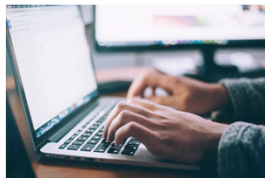
Training



Decision-Makers:

- Training on any technology to be used at a live hearing.
- Training on issues of relevance, including how to apply the rape shield protections provided only for complainants.
- Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

Training



Training



Investigators:

Training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Training:

- Must not rely on sex stereotypes
- Must promote impartial investigations and adjudications
- Must be maintained for 7 years.
- Must be posted on website, if any, or Available for members of the public to inspect.
- All Up-to-Date Training Materials



Note

The content of this presentation is to provide news and information on legal issues and all content is provided for informational purposes only and should not be considered legal advice.

The transmission of information in this presentation does not establish an attorney-client relationship with the recipient. The recipient should not act on the information contained in this presentation without first consulting retained legal counsel.

If you desire legal advice for a particular situation, you should consult an attorney.
