Title IX Coordinator Training
Online Course

Class One: Definitions, Jurisdiction and Preliminary Matters

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Training Course Does Not Constitute Legal Advice

Class Overview

• Definitions
• Jurisdiction
• Formal Complaints
• Supportive Measures
• Dismissals
• Informal Resolution
Definitions

DEFINITION OF SEXUAL HARASSMENT

Sexual Harassment includes one or more of the following:

1. Quid Pro Quo
2. Hostile Environment
3. Clery Definitions

§106.30(a)
QUID PRO QUO

• Conditioning provision of an aid, benefit or service on participation in unwelcome sexual conduct
• Carried out by an employee

HOSTILE ENVIRONMENT

• Unwelcome sexual conduct
• “So severe, pervasive, and objectively offensive”
• “Effectively denies equal access”
• “Determined by a reasonable person”
  • “[S]tanding in the shoes of the complainant.” (Preamble, p. 514)
CLERY DEFINITIONS

• **Sexual Assault** – a forcible or non-forcible sex offense under the FBI UCRS (as defined by the Clery statute)
  - FBI UCRS/SRS definitions or NIBRS Sex Offenses definitions
  - Focus on proscribed actions rather than terms
• **Dating Violence** – violence by a person who is or has been in a romantic or intimate relationship (Clery statute)
• **Domestic Violence** – violence by a current or former spouse or intimate partner, co-parent, living partner, youth or other under state law
• **Stalking** – fear for safety or safety of other or suffer substantial emotional distress

Complainant & Respondent

• Complainant – an individual who is alleged to be the victim of conduct that could be sexual harassment

• Respondent – an individual who has been reported to be the perpetrator of conduct that could be sexual harassment
Actual Knowledge

• Institution has actual notice of sexual harassment or allegations when reported to the:
  • Title IX Coordinator(s)
  • Official With Authority to Take Corrective Actions (OWA)

• Not a respondent
• Not others who may or must report
Education Program or Activity

- Locations, events, or circumstances over which IHE exercises substantial control over both the respondent and the context in which the sexual harassment occurred, or
- Any building owned or controlled by a recognized student organization, and
- Against a person in the United States

Filing a Formal Complaint
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• Filed by the Complainant or signed by the Title IX Coordinator.
• Requests that the IHE investigate the allegations of sexual harassment.
• In person, by mail, email or approved method with Complainant’s signature.
• Complainant must be participating in or attempting to participate in the IHE’s education program or activity.

The Formal Complaint: More Than One Respondent

• *May* consolidate formal complaints against more than one respondent, or by one party against the other party
  • Allegations arise out of the same facts or circumstances.

• Complaints may be filed and sanction imposed *only* against individuals, not groups
Written Notice of Allegations

• Notice of the grievance process.
• Notice of the allegations, including sufficient details and time to prepare a response before the initial interview.
• Statement that the respondent is presumed not responsible.
• Right to advisor of choice.
• Right to inspect and review evidence.
• Any prohibition of false statements or information.

Provide updated notice with any later discovered additional allegations.

Dismissals
**Mandatory/Discretionary Dismissals**

**Mandatory if Conduct Alleged:**
- Would not constitute sexual harassment even if proved;
- Did not occur in the IHE’s education program or activity; or
- Did not occur in the United States.

**Discretionary If:**
- Complainant notifies the Title IX Coordinator in writing of a wish to withdraw complaint or any allegations in it;
- Respondent is no longer enrolled or employed; or
- Specific circumstances prevent sufficient gathering of evidence to reach a determination.

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**Dismissal Results**

If a formal complaint is dismissed:
- Provide written notice of dismissal and reasons to both parties.
- Provide an appeal process.
- The matter *may* proceed under another provision, policy or code.
Supportive Measures

Response to a Report

• Offer **supportive measures** promptly to the Complainant.
• Explain the process for filing a formal complaint.
• Consider the Complainant’s wishes as to supportive measures.
• Follow a grievance process that complies with the regulations *before* imposing any disciplinary sanctions or other actions that are not supportive measures against the Respondent.
Supportive Measures

- Non-disciplinary and non-punitive
- Treat complainant and respondent equitably
- No fee or charge to complainant or respondent
- Restore or preserve equal access without *unreasonably* burdening the other party
- Confidential to the extent possible

Informal Resolution
Informal Resolution Requirements

- Only after a formal complaint is filed
  - At any point in the process
  - May return to formal process if informal resolution does not resolve the matter
- All forms of sexual harassment
  - NOT – Allegations of employee against student harassment
  - ONLY – When the institution deems it appropriate
- Process is facilitated by trained individuals with no conflict of interest or bias
- Written, voluntary consent by the parties, which requires ...

Informal Resolution Process

- Parties must be given written notice of:
  - The allegations and the requirements of the informal resolution process;
  - The right to withdraw from the informal procedure at any time prior to agreeing to a resolution;
  - The circumstances precluding parties from resuming the formal complaint arising from the same allegations; and
  - Any consequences associated with informal resolution, including records that will be maintained or could be shared.
Note

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