Title IX and College-Based Sexual and Relationship Violence

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PRESENTER’S NOTE: Within two weeks of delivering this presentation, significant changes to Title IX guidance were announced and this power point has been changed to address the developments. There is an addendum at the end of this presentation providing a summary and links to the new documents. Within the presentation, red double asterisks (**) and notes have been added to indicate content of this presentation that may be directly impacted by the recent changes.

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College Consortium Coordinator

- NH Attorney General’s Office - Sexual Assault Resource Team (SART Program)
- Connection to college and university campuses
- NH Violence Against Women Campus Consortium
- Mission: to provide a forum where post-secondary institutions in New Hampshire can discuss, develop and implement strategies to end violence against women on their respective campuses
Title IX was originally understood as being about equity in athletics.

has become a symbol for a sweeping movement to end campus sexual assault

Title IX

9 THINGS TO KNOW ABOUT TITLE IX

https://www.youtube.com/watch?v=lfA1v9q6gpi

**For Item 8, see addendum addressing 9/2017 changes to Title IX Guidance**
**Who**  **What**  **Where**  **When**  **Why**

**WHO:** all public and private educational institutions that receive federal funds. Federal funds can include:
- a grant or award
- use of federal land or property
- federal training
- receiving financial assistance indirectly, i.e., through accepting students who receive federal financial aid.

**Who**  **What**  **Where**  **When**  **Why**

**WHAT:** general mandate prohibiting discrimination on the basis of sex in educational programs or activities.

**Who**  **What**  **Where**  **When**  **Why**

**WHERE:** United States...

*and beyond...*

Not attached to school's geography, rather it attaches to the people involved and their connection with the college or university.
- Incidents that occurred while on a school-sponsored trip
- Off-campus housing, fraternities and sororities
- Through participation in online classes
- Study abroad students
- And more...
**When: Title IX Timeline**

- **1964** Civil Rights Act was passed.
- **1970** Congress holds first hearings on sex discrimination in higher education.
- **1972** Title IX of the Education Amendments to the 1964 Civil Rights Act was passed.
- **1976** NCAA unsuccessfully files suit, challenging the legality of Title IX.

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**When: Title IX Timeline**

- **1997** Department of Education OCR issues paper entitled *Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties*. A revised version is issued in **2001**.
- **2011** OCR issued the *Dear Colleague Letter* (DCL).
- **2014** OCR issued *Questions and Answers on Title IX and Sexual Violence*.
- **2014** White House Task Force to Protect Students from Sexual Assault issued its position paper *Not Alone*.
- **2015** OCR issues Title IX Resource Packet
- **Today...**

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**Who What Where When Why**

<table>
<thead>
<tr>
<th>Healthy, age-appropriate, mutually respectful and safe</th>
<th>Mutually flirtatious and playful</th>
<th>Age-inappropriate or non-mutual</th>
<th>Harassment</th>
<th>Sexually abusive and violent</th>
</tr>
</thead>
</table>

**Sexual Violence Continuum of Behaviors**

KEY PRINCIPLES:

- A single or isolated incident of sexual violence may create a hostile environment.
- A school violates a student’s civil rights when it fails to take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and remedy its effects.
- A school is “on notice” of student-on-student sexual violence if “a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual violence.”
Title IX: How

Title IX outlines three procedural requirements:

• Publish a notice of non-discrimination.
• Designate an employee to comply with Title IX:
  – Disseminate notice of non-discrimination
  – Identify and address systematic patterns of discrimination
  – Educate parties about the policy and answer procedural question about the logistics of the disciplinary process
  – Oversee the investigation of a complaint.
• Adopt and publish prompt and equitable grievance procedures

Title IX: How

Grievance Procedures - "Prompt and Equitable"**

• Notice to students and employees of the GPs, including where complaints can be filed
• Application of procedures to complaints of harassment
• Adequate, reliable, and impartial investigation of complaints
• Designated and reasonably prompt timeframes for major stages of complaint process
• Notice to all parties of outcome of complaint
• An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others.

Designations Under Title IX

Responsible Employees

As soon as they know, or reasonably should have known, about the sexual harassment, must report it to the Title IX Coordinator.

An employee who:

- has the authority to take action redress the harassment.
- has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX Coordinator or other appropriate designee.
- whom a student could reasonably believe has this authority or duty.

2014 Q&A on Title IX and Sexual Violence**
Designations Under Title IX

- **Responsible Employees**: As soon as they know, or reasonably should have known, about the sexual harassment, must report it to the Title IX Coordinator.

- **Persons w/ Confidentiality**: Optional category for those without specific privilege but from whom a student might reasonably expect confidentiality; must report non-identifying information (e.g., counselor, health ctr). "Exempt from Title IX Reporting.”

- **Persons w/ Privilege**: Do not need to report. Includes: licensed counselors, pastoral counselors, attorneys in a state with state statute given privilege (e.g., NH crisis center advocates), provided they were acting in that capacity during disclosure.

The Clery Act

- Enacted in 1991 in memory of Jeanne Clery
- Roots in Consumer law: institutions must provide information about campus crimes and safety measures – Annual Security Report
- Geography - focus is “campus” vs. who is involved
- Campus Security Authorities (CSAs)
- Timely warnings

Campus SaVE and VAWA

Violence Against Women Reauthorization Act of 2013 (VAWA) included proposals from Campus SaVE Act:
- New regulations effective July 1, 2015
- Domestic violence, dating violence, and stalking are now “Clery Crimes”
- Ongoing prevention and awareness programs for students and employees
- Advisor of choice – “potted plant rule”
Title IX: Coordinator Responsibilities

Title IX outlines three procedural requirements:

• Publish a notice of non-discrimination.

• Oversee compliance:
  – Disseminate notice of non-discrimination
  – Identify and address systematic patterns of discrimination
  – Educate parties about the policy and answer procedural
    question about the logistics of the disciplinary process
  – Oversee the investigation of a complaint.

• Adopt and publish prompt and equitable grievance procedures
Title IX: Grievance Procedures

Grievance Procedures - "Prompt and Equitable"**
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When Someone Discloses

Before someone discloses
— Before something even happens, students should be made aware of school’s policy, procedure, resources, and roles/responsibilities of different staff members.
— Faculty/staff should understand relationship violence, sexual violence, and stalking and trauma.
— Faculty/staff and advocates should know your school’s policies and become familiar with the resources.

Before Someone Discloses

Student Disclosures:

• Student asks for an extension, etc
• Student writes a personal essay revealing that they have been sexually assaulted
• Student shares feeling “triggered” by class material
• Student asks for non-academic accommodation
• Faculty/staff directly witnesses sexual harassment
• Faculty/staff observes signs that something isn’t right
Sexual Misconduct Report

• As soon as school is on notice:
  • Student should be given options and resources, both off and on/through campus.
  • "Investigation" (investigation) should be initiated.
  • Interim measures may be put in place.
  • Issuing a timely warning should be considered.

Title IX: How Schools Must Respond

Off/Beyond Campus:
• Medical treatment, including option of a sexual assault forensic exam
• Crisis center advocate*
• Right to report to police
• Counseling and mental health services*

On/Through Campus:
• Options to avoid contact with perpetrator
• Housing
• Academic
• Schedule mapping
• School can issue "no contact order"
• Options regarding process:
  • formal complaints
  • request for confidentiality
• Safety planning*
• Right to continue education and be safe from retaliation

Investigation Timeframes

• Investigation: 60 days for process**
  - initial fact-finding
  - determining if harassment occurred and created a hostile environment
  - determining steps to prevent recurrence, including sanctions and remedies
  - does not include appeals
• Not an absolute: more time allowed for complex cases. Schools should document reasons.
• Criminal case delay: for initial fact-finding (3-10 days considered sufficient).
Equity Requirement

Both parties have equal opportunity to present relevant witnesses and other evidence:
• equal opportunity to present relevant witnesses and other evidence
• if one can cross-examine, the other must be allowed to
• lawyers and advisors; restrictions on ability to participate must apply equally – advisor of choice
• expert testimony
• ability to appeal**
• both notified in writing of outcome of complaint and initial appeal

SCENARIO

Next Steps: Options for Victims

• Filing an appeal with campus conduct...
• Filing a Title IX Complaint...
• Filing a Title IX Lawsuit...
• Criminal justice system...
• Civil suit against perpetrator...
Next Steps

Title IX Complaint
- File complaint with OCR under Title IX: “college violated my rights”
- Anyone can file (however…)
- Must be within 180 days, unless extended with good cause.
- Include: contact info for self and institution, previous attempts to resolve, how school violated, 180 days (or why not), and what you want your school to do.

Filing a Title IX Lawsuit
- File a Title IX lawsuit against campus via attorney or federal court
- Must be the victim who files
- Timeline depends on state and statute of limitations (about 1-6 years)
- Organizations that can help
  - Info for attorney: Campus TIX violations, thorough documentation

Great overview: https://www.knowyourix.org/legal-action/taking-legal-action-title-ix/

New Hampshire

- NH Violence Against Women Campus Consortium
- A Model Protocol for Response to Adult Sexual Assault Cases
- uSafeUS App

Protocol Update
(some highlights)

- Everyone:
  - Knowing/communicating their reporting obligations
  - Offering victim options outside campus
  - Encouraging victim to seek medical attention and reach out to crisis center
  - Non-judgment and compassion
- Title IX, Campus Security:
  - Verbal statements and minimal facts
  - Information about moving forward
  - Giving victim resources
uSafeUS
• Available in App store
• Collaboration between
  Prevention Innovations
  Research Center, Computing
  Technology program at UNH-
  Manchester, students, AG’s
  Office, Coalition, Consortium,
  and other community partners
• Beta version: uSafeNH piloted
  by NH campuses
• Free for NH

Addendum
Updates as of September 22, 2017

Updates as of September 2017

On September 22, 2017 changes to Title IX guidance were announced. The
Dear Colleague Letter from 2011 and the Questions and Answers
on Title IX and Sexual Violence from 2014 were withdrawn. The letter
states that it will continue to rely on guidance from 2001 and 2006 for
enforcement. Along with the letter, OCR released a new Question and
Answer document for interim use.
• 2017 Dear Colleague Letter: www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-
  201709.pdf
• 2017 Q&A on Campus Sexual Misconduct: www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf
Sept. 2017 Updates: Key Points

- Schools can now use either the preponderance of the evidence standard or clear and convincing evidence (a higher standard).
- The 60 day time frame has been removed. There is no new set time frame, rather, schools must demonstrate a “good faith” effort at promptness.
- The prohibition of mediation and informal resolutions has been removed. This is now permissible with all permission of all parties (though this may be in conflict with 2006 guidance).

Sept. 2017 Updates: Key Points

- Schools that allow appeals in their procedures can now extend the right to appeal to either only the responding party or both parties.
- Schools that had previously agreed to voluntary resolution agreements with OCR will still be bound to these agreements, but other schools will not be held by those resolutions.
- Most schools will find their policies are still in compliance. At this time, the Consortium is not seeing a trend toward changing policies based on the interim guidance.

Adapted from CAPRA letter September 22nd 2017