

Title IX Coordinator Training Online Course

Class Five: Title IX Training & Policies

Amy C. Foerster
Attorney and Higher Education Professional

Melinda Grier
Melinda Grier Consulting & Novus Law Firm, Inc.

Janet P. Judge
Partner, Holland & Knight LLP

PLEASE NOTE: Training Course Only. Does Not Constitute Legal Advice.

1

Class Overview



- Audiences To Be Trained
- Elements of a Good Training Program
- Benefits and Perils of Trauma-Informed Training
- Auditing Training Materials
- Developing and Revisiting Policies
- Records Retention and Posting

2

Who Do You Train?

3

The Regulations (Title IX Personnel)

- Title IX Coordinators
- Investigators
- Decision-makers
- Anyone who facilitates an informal resolution process



4

Consider Training Others, even though not Required by the Regulations

- Title IX staff who are not identified by the regulations
- Officials With Authority to take corrective measures
- Other individuals with the responsibility to report sexual harassment – former Responsible Employees
- Campus Safety Authorities (CSAs)
- The Campus Community

Elements of a Good Training Program

Planning & Preparation

- Identify who must or will be trained on what topics
- Identify who will conduct training
- Identify the method that will be *most effective* and efficient for those to be trained and trainers
 - Live training v. on demand v. hybrid
 - Should groups be combined?
 - When should training occur?
- Consider training resources and campus culture around training
- Ensure training is without bias or stereotypes
 - Complainants vs. Respondents
 - Balanced without regard to gender or other classifications

Required Training

A school must ensure that Title IX Personnel (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 institution's education program or activity;
- how to conduct an investigation and grievance process including hearings, appeals and informal resolution processes, as applicable; and
- how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.

Required Training

Title IX Personnel Continued:

- How to serve impartially, including by avoiding prejudgment 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.



National Association of College and University Attorneys

9

Required for Investigators



- Conducting a fair and thorough investigation.
- Determining relevance in order to prepare an investigative report that fairly summarizes relevant evidence.



National Association of College and University Attorneys

10

Required for Informal Resolution Facilitators



- How to conduct informal resolution processes (85 FR 30405)
- Document or make public?

Required for Decision-makers:

- Training on any technology to be used at a live hearing.
- Training on issues of relevance, including how to rule on evidence during a hearing and how to apply the rape shield protections provided only for complainants.
- Include training around the 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.



Other Training Topics

Investigator	Decision-maker
<ul style="list-style-type: none">• Questioning• Institutional policies• Responsibility for proposed findings and conclusions• Redacting privileged information• Coordinating investigation with supportive measures	<ul style="list-style-type: none">• Managing the process• Hearing protocol• Institutional policies• Questioning• Preparing findings and conclusions

Training Transparency

- Post all training materials for Title IX personnel on publicly available website. (If no website, then make materials available for members of the public to inspect.)
- Ensure the materials posted are up-to-date, reflecting the most current training provided.



Benefits and Perils of Trauma-Informed Training

15

How to Be Fair to All

Benefits	Perils
<ul style="list-style-type: none">• May help those interviewed retrieve memories• May help those interviewed stick with the process.• May prevent re-traumatizing witnesses	<ul style="list-style-type: none">• May be perceived to favor Complainants• May be perceived as less intense questioning or cross-examination of witnesses• May be misused by untrained questioners

16

Auditing Training Materials

17

When & What to Audit

- Who was trained
- Was training effective
 - Measured outcomes
 - Observed outcomes
- How often to monitor
- Documenting monitoring



18

Policies: Management, Notice, and Some Reminders

19

Managing the Policies

Developing policies	Monitoring policies
<ul style="list-style-type: none">• Existing institutional policies• Existing laws, agreements & practices• Identify conflicts and concurrences and harmonize or change• Include stakeholders	<ul style="list-style-type: none">• Changes in law, regulations, guidance or institutional needs• Changes in related laws or guidance, e.g. FERPA, state APA• Effectiveness• Include stakeholders

20

Notification and Dissemination

- Title IX Coordinator contact info must be distributed and prominently displayed on the IHE website, and in each handbook or catalog made available to applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations with CBAs.
- Nondiscrimination Policy stating:
 - that the IHE does not discriminate on the basis of sex in the education program or activity it operates.
 - That the IHE is required by Title IX not to discriminate.
 - That the IHE's nondiscrimination policy extends to admission and employment.
 - That inquiries about the application of Title IX may be referred to the school's Title IX Coordinator, to OCR, or to both.



National Association of College and University Attorneys

21

Adopt & Publish

- 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.



National Association of College and University Attorneys

22

Policy Decision Point: Framework

All-in-One Policy

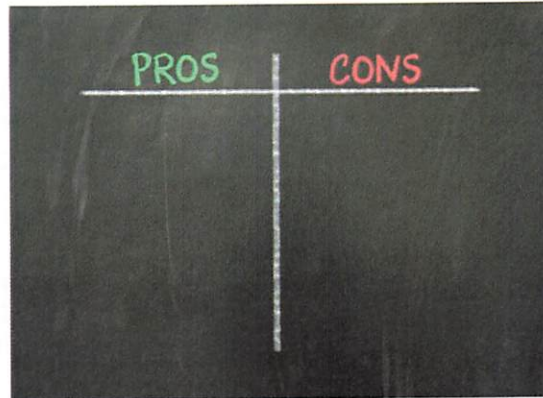
1. Treat all the Same; or
2. Decision Trees

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



National Association of College and University Attorneys

23

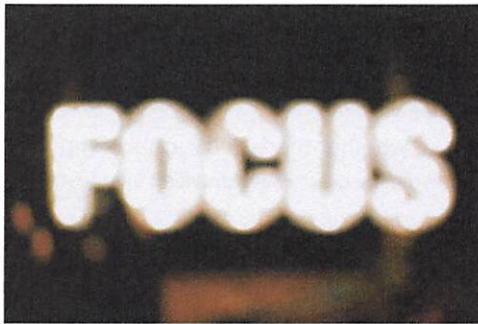
Policy Definitions:

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



National Association of College and University Attorneys

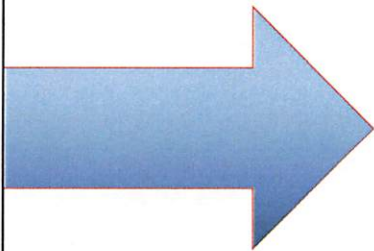
24



Please Note:

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

Don't Forget Clery ... Annual Security Report Policies



- Description of proceedings and processes for filing and handling complaints of sexual assault, dating violence, domestic violence and stalking.
- The standard of evidence used in disciplinary actions for covered offenses.
- List of possible sanctions for covered offenses.
- Range of protective measures available to victims.
- Assurances that proceedings will be prompt, fair, impartial & conducted by trained officials.
- Equal opportunity for parties to have an advisor chosen by the party.
- Simultaneous notification of result, process for appeal and when final.
- Description of primary prevention and awareness programs.
- Procedures for victims to follow if a covered crime occurs.
- Notification of services and accommodations for victims.

Record Retention 7 Years



- For formal complaints:
 - Investigation
 - Determination of responsibility
 - Transcripts or recordings of hearings
 - Sanctions, if any
 - Remedies to Complainant, if any
 - Appeal, if any, and result
 - Informal resolution and result, if any
- For all reports, regardless of whether there is a formal complaint:
 - Actions taken and supportive measures, if any, provided in response to a formal complaint.
 - Basis for a determination that the institution was not deliberately indifferent.
 - Measures to restore or preserve equal access or reasons why not providing support was not clearly unreasonable under the circumstances.
- All training materials for Title IX personnel

Questions?

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.