

Title IX and Financial Aid

Heather M. Kind-Keppel, M.S., M. Ed.
University Diversity & Inclusion Officer
Title IX Coordinator

Title IX states:

“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.”

History of Title IX

- 1972 Gender Equity in Sports
- Second Wave of Enforcement
 - Altered how institutions are counting and directing scholarships.
- Third Wave of Enforcement
 - The promise of gender equity.

University's Responsibility

- A University must:
 - Eliminate sexual discrimination/harassment
 - Prevent its recurrence
 - Address its effects
 - Response must be prompt and equitable
 - Prevent and address retaliation
- A University violates Title IX if it has notice of a sexually hostile environment and fails to take immediate and effective corrective action.

Liability for Sexual Harassment Claim Under Title IX

- Per the Supreme Court, a school district or college may be held liable for sexual harassment of a student by either an employee or a fellow student:
 - A school administrator who has authority to stop the harassment and is deliberately indifferent to the harassment.

What does OCR Say?

- The US DOE, OCR, is responsible for enforcing Title IX.
 - OCR takes a broader view of an institution's responsibility to remedy gender discrimination, sexual harassment, and sexual assault.
- OCR guidelines state:
 - The university is responsible if it knew or reasonably should have known of the harassment, and failed to promptly take reasonable steps to end the harassment and prevent recurrence.

Title IX: Who does it cover?

- Students
- Employees
- Vendors
- Visitors

- Sexual discrimination/harassment/violence by employees, students, or third parties against employees, students, or third parties.

The Where or Title IX Reporting

- On Campus
- Campus sponsored activities
- Bus trips/away games
- Study Abroad
- Conferences
- Internships
- Alumni Activities
- Others

Title IX: What does it cover?

- Prohibits sex (gender based) discrimination
- Prohibits sexual harassment and sexual violence, which are forms of sex discrimination
- Prohibits other forms of sex discrimination:
 - Unequal Pay
 - Pregnancy

Faculty/Staff Procedures

- After a complaint is received, a preliminary investigation is conducted to determine whether a violation may have occurred
- If so, a full investigation is conducted
- In cases not involving sexual assault, the parties may choose to resolve the matter in an informal facilitated conference

Faculty/Staff Continued

- In cases involving serious allegations, interim measures may be taken to protect the complainant
- If sufficient evidence supports a finding of violation of University policy, appropriate action is recommended which may result in disciplinary measures being taken to remedy the violation.
- Both parties will receive a notice of the outcome of the investigation.

Title IX Reporting Obligations

- OCR's 2001 Guidance "a responsible employee includes:
 - Any employee who has the authority to take action to redress sexual violence
 - Who has been given the duty of reporting incidents of sexual violence or other misconduct by students to Title IX coordinator/designee
 - Or who a student could reasonably believe has the authority or duty

Responsible Employees

- Responsible employees should make every effort to ensure that a student who is about to make a disclosure to them understands:
 - Their obligation to report: 1) the name(s) of the alleged perpetrator(s); 2) the name of the student/victim involved in the incident of sexual violence; and 3) relevant facts regarding the incident (including the date, time, and location), to the Title IX Coordinator.

Sexual Harassment

- Quid Pro Quo: unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature,
 - When submission or rejection of such conduct is a basis for decisions affecting the student's education or participation in a University activity.
- Hostile Environment: Unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature which is sufficiently severe, persistent, or pervasive as to alter the conditions of a student' education by interfering with the student's ability to benefit from the educational program.

Retaliation

- Under both Title VII (employee sexual harassment) and Title IX (student sexual harassment) it is unlawful to retaliate against an individual who has:
 - Made a complaint of sexual discrimination, including sexual harassment/assault;
 - Participated in the investigation of such a complaint (i.e. witnesses); or
 - Opposed conduct that is reasonably believed to violate Title VII or Title IX.

Gender-Based Discrimination

- Dating Violence
- Domestic Violence
- LGBTQ+
- Stalking
- Sexual Assault

Definition of Affirmative Consent

- Affirmative Consent is the knowing, voluntary, and mutual decision among all participants to engage in sexual activity.
- Consent can be given by word or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.
- Silence or lack of resistance, in of itself, does not demonstrate consent.
- The definition of consent does not vary based upon participant's sex, sexual orientation, gender identity, or gender expression.

Warning Signs in Students

- Change in behavior
- Emotional/Distressed or Sadness
- Misses practices and classes
- Disinterest in athletic performances or in academics
- Use of alcohol or other drugs
- Desire to leave/withdraw from school

Sharing your observations of a student that you are concerned about is not a FERPA violation.

How to Respond to Disclosures

- Believe them.
- Use active listening skills.
- Listen without judgment. Display empathy.
- Be aware of non-verbal cues, yours and others. Be open in your posture.
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- Let the individual lead the conversation.
- Protect the person's privacy.

Title IX and Financial Aid

- Financial Offices may not:
 - Discriminate based on sex of their counseling responsibilities;
 - The assignment of counselors to students cannot be based on sex.
 - Distribute materials cannot be determined or discriminate on the basis of sex.
- Offices should maintain statements that address Title IX regulations and the application of and dissemination of financial aid.
- Records of Demographic Information

Equitable Allocation of Scholarship Dollars

- Equitable participation was established first.
- But as Title IX morphed, the question was raised whether or not there was equitable share of financial aid and scholarship?
- Cumbersome process due to NCAA scholarship rules.
 - Maximums placed on scholarships.
 - Head count versus Equivalency
 - Division I and Football
- Coordination and communication between athletics and financial aid is imperative.

2001 Revised Sexual Harassment Guidelines

- “Responsible Employees” must be trained to recognize sexual harassment and know to whom it should be reported
- Institutions must disseminate a policy against sex discrimination
- Institutions must disseminate grievance procedure
- Institutions must be prepared to investigate and possibly take disciplinary action or require additional education to prevent harassment from recurring
- Institutions must consider requests for confidentiality
- Institutions must prohibit retaliation
- Institutions must disseminate contact information for Title IX Coordinator

VAWA

- Added requirements to to the Clery Act for addressing sexual assault, dating violence, and stalking
- Requires primary prevention programs for incoming students and new employees and ongoing awareness campaigns
- Requires creation and dissemination of equitable procedures for investigating and adjudicating prohibited conduct
- Requires annual training of individuals involved with investigatory or adjudicatory processes
- Requires dissemination of information about reporting options, victim services, and potential accommodations.

Interim Measures

Q&A No. 3: Equity Focused

- Institutions must “not rely on fixed rules or operating assumptions that favor one party over another, nor many a school make such measures available only to one party.”
- Institutions must make “every effort to avoid depriving any student of her or his education.”
- Institutions must “communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students’ evolving needs.”



Questions?
