

# Title IX Changes/Final Rule

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DISCLAIMER



# Title IX

- Title IX of the Education Acts of 1972 is a federal law that states: “No person in the US shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.”




# Supreme Court

- Ruled in 1979, in Cannon v. University of Chicago, that the objectives of Title IX are two-fold:
  - Avoid the use of federal funding to support discriminatory practices
  - Provide individual citizens effective protection against those practices



# Title IX Coordinator

- Title IX requires recipients of federal funding to designate an employee to coordinate the institution's (recipient's) compliance and to adopt and publish grievance procedures that are **PROMPT** and **EQUITABLE**
  - Contact information for TIX Coordinator must be on the institution's website
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# Guidance vs Regulations

- Sexual harassment was not directly addressed by the regulation until now. Previously, guidance letters were published to assist institutions but were not legal obligations.
- Regulations are law and are legal obligations.

# Terms

- Complainant
  - Any individual who is alleged to be the victim of sexual harassment
- Respondent
  - Any individual who is reported to be the perpetrator of sexual harassment

# Terms

- Formal Complaint: a DOCUMENT that initiates an institution's grievance process....NOT required to constitute ACTUAL KNOWLEDGE
  - Note: Includes parents/guardians that have a legal right to act on behalf of individual
- Actual knowledge: notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary or secondary school.



# Terms

- Deliberate Indifference: accountable for responding meaningfully every time the recipient has actual knowledge of sexual harassment through a general obligation to not act clearly unreasonably in light of the known circumstances, and specific obligations that each recipient must meet as part of its response to sexual harassment.
- Response: Discuss supportive measures, consider CP's wishes regarding supportive measures, inform them of supportive measures, explain the process to file a formal complaint.

# Terms

- Sexual Harassment:
  - Quid Pro Quo
  - Clery/VAWA sex offenses (Sexual Assault, stalking, dating violence, domestic violence)
  - Severe, pervasive, and offensive

Automatically trigger institutional response

# Terms- Clery and VAWA

- Clery/VAWA sex offenses (Sexual Assault, stalking, dating violence, domestic violence)
  - Sexual Assault: Sexual Assault: Any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent.
    - a. Rape: Penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
    - b. Fondling: Touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental capacity.
    - c. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
    - d. Statutory Rape: Sexual intercourse with a person who is under the age of consent (18 years old).

# Terms- Clery and VAWA (Cont)

Stalking - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for his or her safety or the safety of others; or
2. Suffer substantial emotional distress.

For the purposes of this definition:

Course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

## Terms Clery and VAWA (Cont)

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition-Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

Dating violence does not include acts covered under the definition of domestic violence.

For the purposes of complying with the requirements of this section and 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

# Terms Clery and VAWA (Cont)

\*Domestic Violence: A felony or misdemeanor crime of violence committed

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- by a current or former spouse or intimate partner of the victim
- by a person with whom the victim shares a child in common
- by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- by a person similarly situated to a spouse of the victim under the domestic or family violence law
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.



# Institutional Obligations

# Resources

- Institutions **MUST** offer supportive measures to every complainant regardless of formal complaint



- Respondents MAY NOT be treated as responsible without providing due process protections
- Following a FAIR grievance process, if a finding of responsible, MUST provide remedies to the Complainant



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# Main Obligations

- Designate a Title IX Coordinator
- Disseminate the non-discrimination policy
- Disseminate the Title IX Coordinators: name, title, contact information
- Notify Students, employees, and others of the institution's grievance process
- Expressly prohibit retaliation

# Gerber/Davis Framework

- Sexual Harassment: Must be so severe, pervasive, and offensive that it effectively denies a person equal educational access
- Conditions that must exist: School must have actual knowledge of actionable sexual harassment
- Cannot be “deliberately indifferent”



# Additional Obligations

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- Institutions must investigate and adjudicate if a complainant files, or a TIX Coordinator signs, a formal complaint.
- Must have options available for reporting outside of office hours
- Must have clear reporting channels
- Supportive measures cannot be punitive or disciplinary against any party
- Sanctions may not be imposed until completion of fair grievance process
- Institution **MUST** document their reasons why each response is NOT deliberately indifferent
- Institution must post on their website all training materials or make available to the public upon request

# Emergency Removal

- The final rule allows emergency removal of Respondent regardless of grievance process on an emergency basis with notice and opportunity to challenge (appeal) decision

# Dismissal of Complaint

- Complainant must be notified
- Must provide reasoning
- Must have opportunity to appeal the decision on certain grounds

# Grievance Process

- Prompt and Equitable
- Investigation-which evaluates all relevant evidence both inculpatory and exculpatory
- TIX Coordinators, investigators, decision-makers and facilitators for informal resolution are trained and free of bias or conflicts
- Presumption of innocence
- Informs all parties about the procedures and possible remedies/discipline and standard of evidence (either Clear and Convincing or Preponderance)
- Opportunity to present witnesses and evidence



## Grievance Process (Cont)

- Written notice to both parties of the allegations (include right to advisor)
- Opportunity to be heard
- Cannot restrict ability to discuss the allegations or gather evidence
- Written notice of meetings, interviews, hearings
- Burden of evidence gathering on the institution
- Both parties have opportunity to review and respond to the evidence
- Both parties receive a copy of the report prior to determination
- Live hearing





Live Hearing

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# Requirements

- Live cross exam by parties' advisors
- Written determination provided to both parties by Decision Maker
- Decision maker cannot be TIX Coordinator or the investigator
- Appeals applied equally on bases of procedural deficiencies, newly discovered evidence, or bias or conflict which affected the outcome



# Informal Resolution

# Requirements

- Voluntary
- Written consent of both parties
- Not allowed for employee respondent and student complainant
- May only be used AFTER a formal complaint has been filed



# Questions

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# Section II Administration Impact

<https://podcasts.apple.com/us/podcast/title-ix-reform-in-biden-administration-jackie-wernz/id1542038824?i=1000500217274>

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# Section III Lack of Title IX Jurisdiction

# Contact Information

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