

Title IX Coordinator Training

Interior Designers Institute

What We'll Cover Today

- Overview of Title IX
- Forms of gender discrimination
- Compliance checklists
- Title IX Coordinator role
- Model training

Reference Materials

- Reference materials:
 - Institution's Title IX Policy and Grievance Procedures
 - Institution's most recent Clery Act Annual Security Report
 - [Other Institutional policies, procedures, and program materials relevant to Title IX and the Violence Against Women Act (VAWA)]

Why This Matters

Sexual Harassment/Violence in Colleges

- As of September 2015, there were over 130 postsecondary education institutions under investigation by the Department of Education's Office for Civil Rights (OCR) for Title IX Violations
- Investigations focus on the school's handling of sexual violence and harassment complaints

Title IX

Sources of Law

- Statutory: Title IX, VAWA
- Regulatory: Federal regulations 34 CFR §§ 668.46 (VAWA)
- Guidance: Dear Colleague Letters and Office for OCR Q&A

Title IX

No person in the United States 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.

Gender Discrimination

- “Denial of access to education” is interpreted very broadly
- Includes:
 - express bans based on gender
 - treating students differently based on gender
 - discrimination based on gender
- Discrimination includes sexual harassment and sexual violence

What Is Sexual Harassment?

- Unwelcome conduct of a sexual nature
- Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive school environment
- Sexual harassment is prohibited by school policy and is unlawful

What Is Sexual Violence?

- Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent)
- A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion
- Sexual violence can be carried out by school employees, other students, or third parties
- All such acts of sexual violence are forms of sex discrimination prohibited by Title IX

What's Changed?

- Title IX has always prohibited discrimination, including sexual harassment
- Following VAWA, schools have to do more to detect and prevent discrimination, including sexual violence, in addition to responding to allegations of such
- Schools' obligations have been expanded and the August 2020 final rule includes a prescribed grievance process with an investigative process. These rules also outline a live hearing process allowing for cross-examination by designated advisors for each party.
- An appeal process, available to both parties, must be established.

Sex vs. Gender

- Note that the language in the statute refers to “sex” not gender
- This has been interpreted to cover “gender stereotypes”— i.e., the roles that men and women traditionally play
- Students and employees are protected from discrimination/harassment/sexual violence on the basis of their sex
- Extends to the LGBT community

Who Is Protected?

- Title IX's sexual harassment and discrimination provisions (including sexual violence) extend to both employees and students
- This means that for employees, in addition to guaranteeing their rights under other state and federal laws, the school has additional obligations under Title IX

Where Does Title IX Apply?

- Extends to all school-related activities — on and off campus, over which the school exercised substantial control, and the act was against a person in the United States

Compliance Checklist

Compliance Checklist

- Schools must establish the following:
 - Notice of Nondiscrimination
 - Title IX Coordinator(s)
 - Grievance Procedure
 - Means to conduct investigations and hearings
 - Appeal procedures

Notice of Nondiscrimination

Notice of Nondiscrimination

- Puts students and employees on notice of their rights under Title IX
- Provides information for contacting the school's Title IX coordinator and OCR
- It's okay to update via catalog addendum or other notice; must also include in a public facing website

Notice of Nondiscrimination Checklist

Must include the following:

- ✓ The school does not discriminate on the basis of sex in its education programs and activities
- ✓ The school is required by Title IX not to discriminate in this way
- ✓ Questions regarding Title IX may be referred to the Title IX Coordinator or the OCR
- ✓ Name, office address, phone, and email address of the Title IX Coordinator(s)

Title IX Coordinator

Title IX Coordinator(s)

- Schools must designate and authorize at least one employee to coordinate its efforts to comply with Title IX responsibilities
- Responsible for investigating complaints and enforcing school policy
- Can be one or more individuals

Title IX Coordinator Duties

- Core responsibilities:
 - oversee the school's response to Title IX reports and complaints
 - identify and address any patterns or systemic problems
- Must be:
 - knowledgeable of the requirements of Title IX, the school's policy and procedures, and all complaints raising Title IX issues
 - informed of all reports raising Title IX issues
 - given the training, authority, and visibility to fulfill these duties

Grievance Procedure

Grievance Procedure

- Schools must:
 - adopt and publish grievance procedures
 - respond promptly in a manner that is not “*deliberately indifferent*” – meaning in a way that is not clearly unreasonable in light of known circumstances
- Can be included in ordinary grievance process, but must meet all the requirements of Title IX

Grievance Procedure Checklist

- ✓ **Notice** to students and employees of Grievance procedures
- ✓ Application of the **grievance procedure** to complaints filed by students (or on their behalf) alleging sexual violence carried out by employees, other students, or third parties
- ✓ Provisions for adequate, reliable, and impartial **investigation** of complaints, including the opportunity for both the complainant and the alleged perpetrator to present witnesses and evidence
- ✓ Provision of a **live hearing** with cross examination by each party's advisor
- ✓ Provision of an **appeal** process for certain items impacting outcome

Include the following...

- A statement of the **school's jurisdiction** over Title IX complaints
- Adequate **definitions** of sexual harassment (which includes sexual violence) and an explanation as to when such behavior creates a hostile environment
- Explanation of **how to report** complaints, including provisions for confidential reporting
- Identification of the employee responsible for evaluating requests for **confidentiality** (Title IX Coordinator)

Definitions

- **Complainant** – an individual who is alleged to be the victim of conduct that could constitute sexual harassment
- **Respondent** – an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- **Formal Complaint** – a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment

Reporting Violations

School Response Requirements

- Prompt response, explaining **process to file formal complaint**
- Provision of **supportive measures**
- Statement that Title IX **prohibits retaliation**
- Explanation of a student's **right to file a criminal complaint** and a Title IX complaint simultaneously
- Explanation of available **interim measures** that may be taken to protect the student in the educational setting
- A list of **evidentiary standards** that will be used (preponderance of the evidence or the clear and convincing evidence standard) in resolving a complaint
- A list of **potential remedies** for students, potential sanctions against perpetrators, and sources of counseling, advocacy, and support

Training

Training

- In addition to the Title IX Coordinator(s), training materials must be made available on the school's website
- Training for employees and students should include:
 - contact info for the Title IX coordinator
 - school's obligations under Title IX
 - recognizing & reporting harassment, discrimination, and sexual violence
 - school's policies & procedures
 - prevention
- No specified number of hours or frequency — must be done “regularly”

Investigations

Tips for a Successful Investigation

1. Treat all complaints seriously
2. Begin immediately
3. Select investigator carefully (need not be the Title IX Coordinator)
4. Prepare before interviews – review complaint, school policies, student and/or employee files
5. Conduct a thorough investigation – when, where, what, who – and cover the same questions with all interviewees
6. Document, document, document

Investigations and Hearings

- “Investigation” refers to the **process the school uses** to resolve Title IX complaints
- Includes the **fact-finding** investigation and any **hearing** and **decision-making** process the school uses to determine:
 - whether or not the conduct occurred; and,
 - if the conduct occurred, what actions the school will take to end the conduct, eliminate the hostile environment, and prevent its recurrence
 - prevention may include imposing sanctions on the perpetrator and providing remedies for the complainant and broader student population

Investigations and Hearings (continued)

- Must be **adequate, reliable, impartial, and prompt**
- Must include the **equal opportunity** for both parties to present witnesses and other evidence
- May include a **hearing** to determine whether the conduct occurred, including cross examination with party advisors
- May offer and facilitate **informal resolution** options if both parties consent to attempt such (except allegations that an employee sexually harassed a student)

Investigations and Hearings (continued)

- School **may** choose the standard of evidence - "preponderance of the evidence" or "clear and convincing evidence"
- Both parties must be notified, in writing, of the **outcome** of both the complaint and any appeal
- The school must provide a right of **appeal** to both parties

What If the Claim Lacks Merit?

- Or the investigation is inconclusive?
- Document in the same fashion
- State that the school was either unable to corroborate the claims or is unable to conclude that the incident more likely than not occurred as reported by complainant
- No corrective actions will be issued
- Complainant may choose to change classes if he or she has not already done so

Preventing Discrimination

Preventing Discrimination

- The school is always under an obligation to prevent discrimination, including a hostile environment and sexual violence
- This includes preventing retaliation against those who make good faith complaints of Title IX violations
- It also includes taking steps while an investigation is pending to prevent ongoing harassment and retaliation

Other Concerns

Other Considerations

- FERPA
 - Title IX trumps FERPA per OCR
 - Conflict can come up in investigations
- Clery Act
 - A sex crime reported to the school – even off campus – may trigger Clery Act & Title IX obligation
- Parents, media, & others
 - Stick to school policy

Hypotheticals

#1 - Student Bonding

- Janice is a new student. A fellow student, Eric, invites her out for drinks after class. Over drinks, Eric asks whether they can have dinner sometime. Janice laughs off the suggestion, and they continue drinking together. At the end of the evening, Eric again asks her to dinner. She says “No.” They end the evening on a friendly note.
- The following day, Eric sends an IM to Janice’s smart phone and again asks her out. Janice responds that she has a partner. Over the next few months, Eric and Janice email one another with jokes and videos, some of which are sexual in nature.
- A couple months later Janice files a claim of sexual harassment claiming that Eric makes her uncomfortable, and it began as soon as she started school.

Investigation

- Is an investigation merited?
- Where do you start?
- What questions would you ask?
- Examples:
 - Tell me what happened (avoid “yes” and “no” answers; narratives are helpful)
 - Did you let him know you were uncomfortable with his behavior?
 - What triggered the report?

#2 - Inappropriate Behavior in Class

- Lauren and Gail often joke around in class and make sexually charged comments or innuendoes. The instructor has overheard the comments many times and does not know if anyone is uncomfortable with the comments.
- Should she report the behavior to the Title IX Coordinator?

#3 - Trouble with a Partner

- Yvette confides in her instructor that she and her boyfriend, also a student, have been having issues in their relationship. As a result, Yvette has lost focus at school and is struggling in classes. The instructor did not ask specifically what the “issues” were.
- Should the instructor give the Title IX Coordinator a call?

#4 - Salon Client

- A regular client of the school's salon always asks for the same student to provide his services. Other students remark that the client gives them the creeps. The requested student has made no such comments.
- Another student comments to the instructor that she feels bad for the requested student and thinks this client makes the student uncomfortable.
- Should the instructor involve the Title IX Coordinator?

#5 - Giving the Up/Down

- An employee of the school tends to give everyone the up/down look from head to toe. It doesn't make Jill uncomfortable, but she's noticed this tendency many times. The employee seems to do this with everyone, male and female alike.
- Are there possible Title IX issues implicated? Why or why not?

#6 - Easygoing Instructor

- Sam is a relaxed, easygoing instructor. She is not offended by student jokes or inappropriate comments. The school instructs her that she needs to tighten the reins in her classroom.
- She begins to tighten the reins and reprimands Shelly, a chronic offender.
- Shelly complains that whenever males in her class have said similar things in the past, they have not been disciplined and complains that Sam is singling her out based on her gender.
- What are the obligations of the school to investigate the claim?

#7 - Uptight Bystander

- Michelle does not like all of the sexually related jokes and banter that she hears in the classroom.
- She complains to the Title IX Coordinator that she believes it is a hostile environment.
- The Title IX Coordinator interviews other students, and no one else seems bothered in the least.
- What actions, if any, should the school take?

Mock Training for Employees and Students

(starts here)

Title IX

Sexual Harassment, Violence, and Discrimination Prevention for Students
[XYZ School]

Presented By:
[Imaso Luckytobe]
Title IX Coordinator

Introduction

- Title IX Coordinator NAME
 - Office location
 - Telephone number
 - Email address
- I am responsible for ensuring the school is in compliance with its Title IX obligations.

What Is Title IX?

Title IX

- Prohibits sex-based discrimination in schools that receive any kind of federal funding, including this institution
- Sexual harassment and sexual violence are forms of sex discrimination
- Includes harassment based on gender stereotyping
- It also extends to employees of the school

Why Are We Providing This
Training?

Title IX Training

- School policy prohibits discrimination on the basis of gender, including sexual harassment and sexual violence
- The school wants to ensure that you know about this policy, how it is enforced, and how to report violations
- Retaliation against anyone reporting violations of this policy is prohibited

What Is Sexual Harassment?

Sexual Harassment

- Unwelcome conduct of a sexual nature
- Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive school environment

Sexual Harassment Myths

- x Only women can be sexually harassed
- x There is no such thing as same-sex harassment
- x A person has to be the direct object of the harassment to be a victim
- x Instructors can't be harassed by students
- x The harasser must have a sexual interest in the victim

Who Is Protected By Title IX?

Title IX Applies to Employees and Students

- Title IX applies to employees and students of the school in the United States
- It protects both men and women; it applies regardless of sexual orientation
- Sexual harassment between people of the same gender is prohibited, just as harassment between individuals of opposite gender is prohibited

Where Does Title IX Apply?

On and Off-Campus Conduct

- Title IX prohibits sexual harassment both on and off campus
- Title IX applies to school activities that occur off campus where the school exercises substantial control
- Title IX may also apply to non-school related off-campus activity if it creates a hostile environment at school

Third Parties

Third Party Harassment

- Students/staff are protected from harassment by persons who are neither students nor employees of the school, if such conduct occurs at the school or at a school related activity

How to Report Violations

Reporting Violations

- The school's policy provides how you should report violations of the school's policy against gender discrimination
- Violations should be reported to the Title IX coordinator
- Reports may be made by the complainant personally, by a representative, or a combination of the two

Investigation of Complaints

Investigation of Complaints

- When the school receives a complaint, the Title IX Coordinator will initiate an investigation
- A determination will be made whether the complaint is valid or not
- Retaliation is prohibited at all times, including while the investigation is pending

Questions?