Title IX’s New Regulations

Implications for Campus Safety
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34 CFR Part 106

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Final rule.              EFFECTIVE DATE: August 14, 2020
Implications for Campus Safety

• Prior to August 14, 2020, the last time the OCR of DOE passed Title IX regulations was 1997. (Ronald Reagan Administration)
• Guidance is recommendations for policy and practice. They are not mandatory and do not carry the weight of law.
• Regulations carry the weight of law. However, there is a process to make guidance regulations.
  ➢ Over 124,000 public comments (1 ½ years)
**Complainant:** A person who alleges that she/he has been the subject of behavior that violates the University Sexual Misconduct Policy and wishes to report the allegations to a Title IX Coordinator.

**Respondent:** A person who is alleged to have violated the University Sexual Misconduct policy.

**Note:** A person may be a complainant, or a respondent, even where no formal complaint has been filed and no grievance process is pending. (p. 19 of 2033 pages)
**Terms and Definitions**

**Recipient:** A postsecondary educational institution that receives Federal financial assistance.

**Decision-Maker:** A member of the Administrative Hearing Panel or an Appeal Officer.

**Supportive Measures:** Services designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party and without constituting punitive or disciplinary actions including by protecting the safety of all parties and the recipient’s educational environment or deterring sexual harassment.
**Remedies:** When a respondent is found to be responsible for sexual harassment, the recipient must effectively implement remedies for the complainant, designed to restore or preserve the complainant’s equal educational access, and may impose disciplinary sanctions [punitive] on the respondent.
Supportive Measures and Remedies

Supportive Measures
Available to both complainant and respondent
Cannot be punitive or restrictive

Incident → Initial Assessment → Formal Investigation → Live Hearing → Appeal

Case Is Closed
For complainant upon respondent
Can be punitive or restrictive

Remedies
Examples of Supporting Measures and Remedies

Supporting Measures

- Counseling
- Resident Hall Relocation (voluntary)
- Escort Service (to and from vehicle)
- Academic Assistance (test taking, tutoring)

Remedies

- Resident Hall Relocation (party required)
- No contact order
- Academic Class Relocation/Withdrawal
- Suspension/Expulsion
- Facility Ban
The hearing will occur following an investigation by University sanctioned investigator(s). The hearing panel will consist of three (3) Administrative Hearing Officers (AHO), one of which will be the Chair of the panel as outlined below.

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Chair</th>
<th>CUW Member</th>
<th>CUAA Member</th>
<th>Appeal Officer</th>
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<tbody>
<tr>
<td>Student</td>
<td>Steve Taylor</td>
<td>Bill Cario</td>
<td>Ryan Peterson</td>
<td>Al Prochnow</td>
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</tbody>
</table>
Under the former administration Title IX jurisdiction extended to anywhere in the world.

Coordinators with investigators led the grievance process.

Most recently, the courts have reversed sanctions on respondents because the recipient was not accorded his/her constitutional rights.

- e.g. Duke Lacrosse, UVA Frat – Rolling Stone, Doe v U. Michigan, Purdue U. “Alcohol isn’t the cause of sexual assault, Men are”
Title IX Component
20 U.S.C. 1681

“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 education program or activity receiving Federal financial assistance . . . .” (p. 13)

Section 106.45(b)(3). Similarly, nothing in these final regulations prevents a recipient from addressing conduct that is outside the Department’s jurisdiction due to the conduct constituting sexual harassment occurring outside the recipient’s education program or activity, or occurring against a person who is not located in the United States. (p. 46)
CONCORDIA UNIVERSITY’S NEW SEXUAL MISCONDUCT . . .

A Title IX Component

A University Component

Parts
Violation Terminology: **SAME DEFINITION** vs **DIFFERENT DEFINITION**

**Title IX Offenses**

1. **Sexual Harassment**
2. Clery Sexual Assault Offenses
   2a  Forcible Rape
   2b  Forcible Sodomy
   2c  Sexual Assault w/an object
   2d  Incest
   2e  Statutory Rape
   2f  Fondling
3. **Dating Violence**
4. **Domestic Violence**
5. **Stalking**
6. **Retaliation**

**University Offenses**

7. **Sexual Harassment**
8. Non-Consensual Sexual Intercourse
9. Non-Consensual Sexual Contact
10. Sexual Exploitation
11. **Stalking**
12. **Dating Violence**
13. **Domestic Violence**
14. **Retaliation**
15. Improper Restraint or Detention
16. Fraud and Lying
Sexual Misconduct Policies

Title IX is a federal law that protects people from sexual harassment and discrimination in educational programs that receive federal financial assistance. Sexual harassment is unwelcome, gender-based verbal or physical behavior that is objectively offensive and is severe, persistent, or pervasive. The effect of harassment creates a hostile environment and/or interferes with, denies, or limits a person's ability to benefit from Concordia's educational programs and/or activities. Learn more about CU's Sexual Misconduct Policy here.
Section 106.45(b)(9) allows recipients to offer and facilitate informal resolution processes, within certain parameters to ensure such informal resolution only occurs with the voluntary, written consent of both parties; informal resolution is not permitted to resolve allegations that an employee sexually harassed a student. (p. 99)
Informal Resolution

- Incident
- Initial Assessment
- Formal Investigation
- Live Hearing
- Appeal

- Only following a formal complaint
- Must be voluntary & written (signed)
- Either party may withdraw at any time
- Conducted by trained facilitator
- Agreement – signed contract
Formal Complaint - Charges Issued

Made in writing to the Title IX Office and must include . . .

- Violation (date, time, and location, and nature of the alleged misconduct)
- Signed by complainant
- Charges Made (chapter & verse in Student C. C. or Employee HB)
- Name of complainant
- Title IX Coordinator may also file complainant without complainant
- Example: John Doe you are charged with violating the Code of Student Conduct, Article 2, § D 2a Forcible Rape on or about (date) against (name of complainant) at (location). It is alleged that you . . .

Note: Having a victim repeatedly “re-live” the behavior is a form of re-victimization.
Investigation - Evidence Collection

- Title IX Office does the investigations and collects the evidence.

- In the written notice of allegations required under § 106.45(b)(2), a recipient will notify the parties of the grievance process under § 106.45, including the requirement that both parties be able to review and inspect evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint. (p. 1500 – 01)

- These final regulations require a recipient to provide a written notice upon receipt of a formal complaint of sexual harassment, to both parties, that the parties may have “an advisor of their choice, who may be, but is not required to be, an attorney” pursuant to § 106.45(b)(2)(i)(B), and also require a recipient to provide the parties with the same opportunities to have an advisor present during any grievance proceeding, without limiting the choice or presence of advisor for either the complainant or respondent. (p. 1573)
Incident

Initial Assessment

Formal Investigation

Live Hearing

Appeal

The Grievance Process

... also require a recipient to provide the parties with the same opportunities to have an advisor present during any grievance proceeding, without limiting the choice or presence of advisor for either the complainant or respondent. (p. 1573)
How do you treat the parties?

• This is **NOT** the complainant’s case – it is the University’s case.

• The University has the burden of gathering the evidence and the burden of proof.

• Treat complainants and respondents equitably.

   § 106.44(a) **requires a recipient to treat complainants and respondents equitably** by offering supportive measures as defined in § 106.30 to a complainant, **and by following a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent.** (p. 1588)
How do you treat the parties?

- [T]hese final regulations prescribe that the only recipient official who is authorized to initiate a grievance process against a respondent is the Title IX Coordinator. (p. 71)

- The Department believes that the final regulations benefit respondents by ensuring that recipients do not impose disciplinary sanctions against a respondent without following a grievance process that complies with § 106.45, 560 and that the prescribed grievance process gives strong due process protections to both parties. (p. 371)
How do you treat the parties?

• The recipient **must presume the non-responsibility** of respondents until conclusion of the grievance process.

✓ **Section 106.45(b)(1)(iv) requires recipients to presume the respondent is not responsible until conclusion of the grievance process**, because such a presumption reinforces that the burden of proof remains on recipients (not on the respondent, or the complainant) and reinforces correct application of the standard of evidence. (p. 285)

With respect for a process to remove a respondent from a recipient’s education program or activity, these final regulations provide an emergency removal process in § 106.44(c) if there is an immediate threat to the physical health or safety of any students or other individuals arising from the allegations of sexual harassment. A recipient must provide a respondent with notice and an opportunity to challenge the emergency removal decision immediately following the removal. (p. 574)
The Emergency Removal Committee (hereafter ERC) has the authority to remove any University community member who poses an immediate threat to the physical health or physical safety of a complainant, respondent, or any other person participating in the investigation or adjudication of the Title IX process.

The ERC will be composed of 3 members as follows:

- Student has alleged a threat: Title IX Coordinator (or designee), Member of the Counseling staff appointed by the T9C (with designee back-up), Dean of Students (or designee)

- Employee has alleged a threat: Title IX Coordinator (or designee), Member of the Counseling staff appointed by the T9C (with designee back-up), Human Resource Administrator appointed by the T9C (or designee).
In making the decision to remove a respondent on a temporary basis, the ERC will use the following criteria.

- This meeting would include interviewing any individual who has relevant information regarding the immediate threat of the respondent.

- Before making a decision, the ERC must meet with the respondent and allow the respondent to address the allegations of the immediate threat.

- Consider only the physical safety of the potential victim(s).

- Assess the available supportive and/or proscriptive measures that can remediate the immediate threat thus allowing the respondent to remain as a member of the University community.
Assess the credibility and relevance of the information received.

Assess the nature and severity of the potential harm.

Assess the duration of the risk.

Assess how likely it is that the potential harm will occur.

Assess the imminence of the potential harm.

Determine that there is no other reasonable or restrictive remedies available other than emergency removal.
Campus Safety’s Role in Title IX Cases
Supporting Survivors of Trauma: How to Avoid Re-traumatization (Online MSW)

This retelling of these events can exacerbate symptoms of post-traumatic stress disorder (PTSD) and potentially re-traumatize the person.

7 Ways to Avoid Re-Traumatizing A Trauma Victim by Tamara Hill

1. Do not force the person to talk about the trauma: Forcing someone to talk about a terrible event is making someone re-live the experience and all of the negative emotions that come with it.
What if all these trained professionals want to help?
Victim
Title IX Staff
Counselor
Campus Safety
Health Service Staff
Faculty – Psy. Dept.
Advisor
- Parents
- Siblings
- Other Relatives
- Roommates
- Res Hall Staff
- Friends
- Etc.
Scott Lewis’ “Car Wreck Mode” 2 Questions

- **Are you OK?**
- **What can I do to help you?**

Once you have said this then, Scott says . . .

. . . Get them to the person who can help.
Contact a Title IX Coordinator

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Fridge Magnet
Questions

Answers