TRAINING ON TITLE IX REGULATIONS
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Before we begin

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Topics for today

- Understanding the institution’s mandatory response: Scope, jurisdiction, and important definitions
- Roles in the process, and how to serve impartially, without bias, and without conflicts of interest
- Informal resolution
- How to conduct an investigation
- Relevance and special categories of evidence
- How to convene a hearing
- How to handle appeals

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SCOPE, JURISDICTION, AND IMPORTANT DEFINITIONS

Mandatory jurisdiction to respond

- Actual knowledge
- Sexual harassment
- Education program or activity
- Person in the United States

Respond promptly in a manner that is not deliberately indifferent

- Promptly contact complainant to discuss availability of supportive measures regardless of whether complaint is filed and explain process for filing complaint
- What are supportive measures?
- Supportive measures for respondents
Mandatory jurisdiction to investigate
Formal complaint filed by a complainant

• What is a formal complaint?
• How to file it/where is it?
• What does it need to say?

Definition of Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;

2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or

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(the offense formerly known as hostile environment sexual harassment)

1) Unwelcome conduct
2) Determined by a reasonable person to be so
   a) Severe AND
   a) Pervasive
   a) Objectively offensive
3) Effectively denies a person equal access to the institution’s education program or activity
ROLES IN THE PROCESS, AND HOW TO SERVE IMPARTIALLY, WITHOUT BIAS, AND WITHOUT CONFLICTS OF INTEREST

Title IX Roles

• Title IX Coordinator
• Investigator
• Decisionmaker
• Appeals officer
• Facilitator of informal resolution
• Party advisor

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And what about your sanctioner?

How to serve impartially

- Avoid pre-judgment of the facts
- Bias
- Conflict of interest

COMMENCEMENT OF FORMAL RESOLUTION PROCESS
Formal complaint is filed... what now?

- Grievance process
- Allegations, including sufficient details
- Statement of presumption of non-responsibility
- Right to an advisor/attorney
- Right to inspect evidence
- Any provision in code that prohibits making false statements during process

Dismissing complaints

**MANDATORY**
- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

**DISCRETIONARY**
- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info

Bad behavior that must be dismissed pursuant to regulations

- Why might we want to address this conduct?
- Are we prohibited from addressing it?
- If not prohibited, how can we address it?
Informal resolution

- Can only be offered after formal complaint has been filed
- May include arbitration, mediation, or restorative justice
- Facilitators must be trained in informal resolution

Steps of investigation

- Trained investigator collects information
- Investigator shares evidence “directly related” to allegations with parties
- Parties have 10 days to respond
- Investigator creates summary of “relevant” evidence and shares with parties
- Parties have 10 days to respond
Evidence “directly related” to the allegations

- Sensitive information
  - Consider restrictions on use and non-disclosure agreements
- Truly irrelevant information
  - Consider redactions and privilege log

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Party review of evidence and written response

- Review
  - Develop document-sharing protocol
- Tips for keeping timeframes “prompt”

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Creating investigative report summarizing “relevant evidence”

- Use logic and common sense
- Toss out old rules/practices regarding categories of information permitted (except for three situations)
Relevance IS
- Logical connection between the evidence and facts at issue
- Tends to make a material fact more or less probable than it would be without that evidence
- Assists in coming to the conclusion – it is “of consequence”

Relevance IS NOT
- Strength of the evidence
- Believability of the evidence
- Based on type of evidence: circumstantial v. direct
- Based on complicated rules of court

Special categories of evidence that are off-limits
- IRRELEVANT: Complainant’s prior sexual predisposition or prior sexual history (with two exceptions)
- IRRELEVANT: Information protected under a legally-recognized privilege
- CAN’T USE: Medical, psychological and similar records without written consent of party

Pre-hearing work
- Confirm advisors for each party; appoint if necessary; consider having back-ups available
- Figure out who will be requested to attend
- Explain to the parties what to expect
- Establish ground rules and structure of hearing
- Consider convening a pre-hearing conference
- Make logistical and technology decisions (and give them a trial run)
“Submitting to cross examination”

• What this means

• What does NOT submitting to cross examination look like?

• Consequences of NOT submitting to cross examination

Managing the questioning process

• Order of questioning

• Making thoughtful rulings on relevance

• Brainstorm and prepare for hearing scenarios
Remember special categories of evidence that are off-limits

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Decision and written determination

- Use disciplined, unbiased evaluation of relevant evidence
- Understanding weight of evidence v. relevance of evidence
- Include specific elements required by regulations

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Required elements in written determination

- Description of procedural steps from complaint through determination
- Findings of fact
- Conclusions regarding application of policy to facts
- Rationale for each result of each allegations
- Sanctions/remedies
- Appeal options (must permit appeal)
Grounds for appeals

- Procedural irregularity that affected the outcome of the matter
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- Title IX coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter
- Any other grounds, as long as offered equally to both parties

QUESTIONS?
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