Title IX Regulations

Barbara K. Mistick, NAICU President

Joshua W.B. Richards, Partner, Saul Ewing

Jody Feder, NAICU Director of Accountability and Regulatory Affairs
Agenda: The Title IX Top Nine

1. What is covered?
2. Who is covered?
3. Title IX Coordinator duties
4. Notice and reporting
5. Training
6. General grievance procedures
7. Grievance procedures for sexual harassment on campus
8. Athletics
9. Pregnancy
What Is Covered?

All forms of sex discrimination

• Sexual harassment (broader definition)
• Sexual violence
• Sexual orientation and gender identity discrimination
• Family status and pregnancy
• Retaliation

Expanded geographic scope
Who Is Covered?

Students

Employees

Third parties

Current religious exemptions apply
Title IX Coordinator Duties

Lots of responsibilities

• Notify about grievance procedures and informal resolution
• Initiate complaints
• Supportive measures
• Respond to reports by employees
Notice and Reporting

Differ depending on employee involved

- **Confidential employees**
- **Non-confidential employees** with responsibility for administrative leadership, teaching, advising or instituting corrective measures
- **Other non-confidential employees**
Training

<table>
<thead>
<tr>
<th>Differs depending on category of employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Must occur promptly upon hiring or change of position that alters Title IX duties and annually thereafter</td>
</tr>
<tr>
<td>Materials must be made available for inspection upon request</td>
</tr>
</tbody>
</table>
General Grievance Procedures

Must be prompt, equitable, free from conflict or bias, protect privacy

Evidentiary, notice, and dismissal rules apply

Single-investigator model and informal resolution allowed

Process to assess credibility required

Preponderance of the evidence standard, with one exception
General Grievance Procedures for Sexual Harassment on College Campuses

Procedures apply to student complainants and respondents

Additional requirements about notice, dismissal, investigations, access to evidence apply

Option to provide live hearing available, with lots of rules around questioning parties and witnesses

Appeals process required
## Athletics

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Not addressed in regulations</strong></td>
</tr>
<tr>
<td>2</td>
<td><strong>De minimis harm standard does not apply</strong></td>
</tr>
</tbody>
</table>
Pregnancy

- Covers termination and lactation
  - Lactation rooms required
- Treat like other temporary medical conditions
- Requires reasonable modifications, including voluntary leave of absence
- Limits on documentation
- Title IX Coordinator involvement
Resources

Shortly after taking office, President Biden directed the Department of Education to conduct a comprehensive review of the agency’s Title IX regulations, guidance, and related policies.

The Education Department released the long-awaited final regulations on April 19, significantly expanding the scope of Title IX’s

Title IX Timeline 2011-2024

- 2011: Obama Administration issued guidance on campus sexual harassment.
- 2014: Obama Administration issued additional guidance on campus sexual harassment and increased its Title IX enforcement efforts.
- 2017: Trump Administration repealed Obama-era guidance, issued new guidance, and announced plans to promulgate.
- 2020: Trump Administration
Contacts

Jody Feder
Director of Accountability and Regulatory Affairs
jody@naicu.edu