Title IX Basic Training

Presented by:
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Ask Questions in Q&A
Why are we here?

Know the Rules
Recognize
Title IX Sexual Harassment

But not just any action -- the right action for the conduct at issue!
Why is this so important?
1 in 4 women experiences sexual assault before age 18

10% of children are targets of educator sexual misconduct before high school graduation

48% of U.S. students are subject to sexual harassment or assault at school before graduating high school

In 2010-2011, 36% of girls, 24% of boys and 30% of all students grades 7-12 experienced online sexual harassment

Only 23 percent of all sexual assaults are reported to the police.
Harassment and assault can have long-lasting, detrimental effects on victims.
Effects on Individuals

**Stress**
- Disengagement
- Anger
- Mistrust
- Conflict
- Lost Opportunities

**Suicide**
- ANXIETY
- PTSD
- DEPRESSION

**Drop-out**
- Poor performance in school
- Fear

Effects on Teams

- Decreased focus
- Lost productivity
- Withdrawal
- Neglect
- Absenteeism
- Malingering
- Lack of trust in leadership
- Turnover
Unfair processes can have long lasting, detrimental effects on the parties.
You could be personally responsible.
What is Title IX?

Title IX Statute

(20 U.S.C. §§ 1681–1688)
"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."
What falls under Title IX?

- Recruitment, Admissions, and Counseling
- Financial Assistance
- Athletics
- Sex-Based Harassment
- Treatment of Pregnant & Parenting Students
- Discipline
- Single-Sex Education
- Employment
- Retaliation

Title IX Regulations

(34 C.F.R. Part 106 – Amended as of 8/14/2020)

- Prohibit discrimination on the basis of sex
- Establish procedural requirements
  - Policy + detailed grievance procedure
  - Designation of Title IX coordinator(s)
- And many more requirements!
When Must a School Respond to Sexual Harassment?

It Depends Who [Well, Which Law] You Ask

**Employment**
- Illinois Human Rights Act
- Title VII
- Title IX

**Students**
- Illinois Human Rights Act
- Illinois Sex Equity Regulations
- Title IX
When must a school respond to Title IX sexual harassment?

A school with actual knowledge of [Title IX] sexual harassment in an education program or activity against a person in the United States must respond.
What is Actual Knowledge?

- Sense
- Report

Official with Authority

- Title IX Coordinator
- Any other officials who have been given authority to institute corrective measures by the school district
- K-12: All employees
Reporting Sexual Harassment: Who, How and When?

• Any person may report sex discrimination, regardless of whether the person is the alleged victim of the reported conduct
• Reports can be made by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator
• Or by any means that results in the Title IX Coordinator receiving the person’s report
• Such a report may be made at any time, including during non-business hours, by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator

Key Word: “Allegation”

Once a school has notice of an allegation that, if true, would constitute Title IX Sexual Harassment, it must respond

“Well, we didn’t believe there was enough evidence it happened” is not a valid excuse to avoid using your Title IX Sexual Harassment grievance process
Issue Spotting

Order of protection: Principal served with order of protection requiring student to have no contact with another student due to alleged sexual assault.

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Title IX – What is Sexual Harassment?

- Hostile Environment
- Quid pro quo by an employee
- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking
**Quid Pro Quo**

**Quid** = Something  
**Pro** = For  
**Quo** = Something

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**Title IX Quid Pro Quo**

**Definition:** An employee of the educational institution conditioning an aid, service, or benefit of the educational institution on participation in unwelcome sexual conduct.

**New to 2020 rules:** Only an employee (not a volunteer, another student, etc.)

**Codified:** Severity and harm presumed
Clery Act/VAWA “Big Four”

- Domestic Violence 34 U.S.C. 12291(a)(8)
- Dating Violence 34 U.S.C. 12291(a)(10)
- Stalking 34 U.S.C. 12291(a)(30)

Title IX Hostile Environment
Unwelcome Conduct

- Not Participation
- Not Silence
- Age Matters
- Intoxication Matters
- Culture Matters
- Ability Matters

**subjective + reasonable person

Severe

- Something more than juvenile behavior
- Something more than antagonistic, non-consensual, and crass conduct
- Simple acts of teasing and name-calling are not enough, even when comments are based on sex
- It is not enough to show that a student has been teased or called offensive names
Pervasive

- Systemic or widespread
- Multiple incidents of harassment
- One incident is not enough, even if very severe

Objectively Offensive

- Behavior that would be offensive to a reasonable person under the circumstances
- Not just offensive to the victim, personally or subjectively
- Consider ages, numbers, relationships – the constellation of surrounding circumstances, expectations, and relationships
Hostile Environment Factors

- Context, Nature, Scope, Frequency, Duration, and Location of the Incidents
- Identity, Number, Ages, and Relationships of the Persons involved
Yes or No?
Is this “Title IX Sexual Harassment”?

#1: Yes, No, or Need More Info?
A student makes multiple insensitive sex-based jokes to another student.
A teacher makes a sexually inappropriate comment to a student in class.

One student grabs another student’s breast during a soccer game.
#4: Yes, No, or Need More Info?

A student “uses tongue” in theater club during an acting scene without the other student’s permission.

#5: Yes, No, or Need More Info?

A group of students (one sex) make a public Facebook post rating students (of another sex) by attractiveness.
#6: Yes, No, or Need More Info?

A teacher (one sex) asks a student (of another sex) to trade a back rub for a good grade on a test.

#7: Yes, No, or Need More Info?

Students incessantly mock a female student for not wearing makeup, saying she “looks like a boy.”
#8: Yes, No, or Need More Info?

A student sends a nude picture to the student’s significant other (another student).

#9: Yes, No, or Need More Info?

The recipient forwards the photo a group chat of 10 classmates.
When must a school respond to Title IX sexual harassment?

A school with actual knowledge of [Title IX] sexual harassment in an education program or activity against a person in the United States must respond.
Program or Activity: Any location, events, or circumstance over which the school exhibits substantial control over both the alleged harasser and the “context” in which the harassment occurred
When must a school respond to Title IX sexual harassment?

A school with actual knowledge of [Title IX] sexual harassment in an education program or activity against a person in the United States must respond.

Schools need only address sex discrimination occurring against a person in the United States under Title IX.
DISMISSALS

Mandatory if conduct alleged: Permissive if:

• Is not Title IX Sexual Harassment
• Did not occur in the school’s program or activity
• Did not occur in the United States

**Remember, you can still address under non-Title IX policy

• Complainant requests to withdraw in writing
• Respondent’s enrollment or employment ends
• Specific circumstances prevent school from gathering evidence sufficient to reach a determination (e.g., passage of time, lack of cooperation by complainant)

How Must You Respond?
Policies on Harassment

- **Option 1: UCCS Policy 5.7** Title IX Sexual Harassment Process (for Title IX Sexual Harassment)

- **Option 2: UCCS Policy 5.6** Investigation Procedures for Non-Title IX Harassment (other sexual harassment, other violations of law and policy)

- **Option 3:** Other rules or policies not related to sexual harassment (bullying, code of conduct, etc.)

Remember: If mandatory dismissal, may use other policy to address SH; unclear if permissive or finding of non-responsibility.
Adequate Response

1. Initial Response/Supportive Measures
2. Informal Resolution (Voluntary)
3. Investigation
4. Decision
5. Appeal
1 Initial Response/Supportive Measures

- Must be called Title IX Coordinator
- Must meet with alleged victims of sexual harassment (the Title IX Complainant) upon actual knowledge of TIX sexual harassment even if no formal complaint filed
- Can delegate responsibilities
Terminology

**Title IX Complainant**: A person who is alleged to be the victim of conduct that could constitute Title IX Sexual Harassment
- NOT a third party who reports Title IX Sexual Harassment perpetrated against someone else
- NOT the Title IX Coordinator, even if the TIXC "signs" a Formal Complaint

**Title IX Respondent**: A person who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment

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Report to OIG
(833) 835-5277

1. Conduct by a **Covered Individual** with a student, former student, or minor involving actual, attempted, or suspected **sexual misconduct**

Report to OSP
(773) 535-4400

1. Conduct by a **Covered Individual** with a student, former student, or minor involving actual, attempted, or suspected **Title IX and/or sexual misconduct, retaliation, or failure to report or address** such conduct (except for allegations of gender discrimination) – OSP reports to OIG

2. Conduct concerning **only** students involving actual, attempted, or suspected **Title IX and/or sexual misconduct**

3. Conduct regarding **Title IX sex and gender discrimination** that impacts **students**
“Sexual Misconduct”

- Misconduct covered under Title IX
- Grooming
- Inappropriate touching
- Sexual electronic communication
- Sexual bullying
- Sexual exploitation
- Exposure, voyeurism, masturbation

“Covered Individuals”

- Board members, directors, employees, contractors, subcontractors, agents, and advisory parent council members
Title IX Coordinator (or designee) must promptly, even if no Formal Complaint is filed:

1. **Contact** the Title IX Complainant to discuss the availability of “supportive measures”
2. **Consider** the Title IX Complainant’s wishes with respect to supportive measures
3. **Inform** the Title IX Complainant of the availability of supportive measures with or without the filing of a formal complaint
4. **Explain** the process for filing a Formal Complaint
Formal Complaint

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. 34 C.F.R. § 106.30(a).

Signing a Complaint

Factors to consider
Supportive Measures

- **Non-punitive**, individualized services, offered as appropriate and without charge to a complainant or a respondent before or after the filing of a formal complaint, or where no complaint has been filed (34 C.F.R. 106.30(a)).
- Should be designed to restore or preserve equal access to the education program or activity without “unreasonably” burdening the other party
- Should be confidential

Emergency Removal/ Administrative Leave

**Immediate emergency removal**
(34 C.F.R. 106.44(c))
- Based on an individualized safety and risk analysis
- Necessary to protect a student or other individual from immediate threat to physical health or safety
- Notice, opportunity to challenge provided “immediately” provided the removal
- Consider other laws, e.g., expulsion laws (SB100), “change in placement” under IDEA or 504

**Employee administrative leave**
(34 C.F.R. 106.44(d))
- Not prohibited
- Consider state law, board policy, handbooks, and bargaining agreements
Informal Resolution (Voluntary)

<table>
<thead>
<tr>
<th>INFORMAL RESOLUTION IS NOT REQUIRED</th>
<th>NOT ALLOWED FOR EMPLOYEE - STUDENT</th>
<th>TIMING</th>
</tr>
</thead>
</table>
| • Cannot condition enrollment, employment, or any right on waiver of right to investigation and adjudication of formal complaints under grievance procedure  
• Both parties must voluntarily consent in writing | • Not available to resolve allegations that employee sexually harassed a student | • Cannot offer informal resolution process until formal complaint is filed  
• Any time prior to reaching a determination, either party may request informal resolution  
• Any party has a right to withdraw prior to agreement |
Informal Resolution

Facilitators

- We do not recommend using the Title IX Coordinator or investigator or decision-maker (complaint and appeal)
Formal Complaint Response
34 C.F.R. 106.45(b)

- Requires a number of specific steps for investigating
- Major shift from previous, more deferential stance toward specific policies and practices for complaint resolution

Who should investigate?
- Can be the Title IX Coordinator
- But should it?
More Steps: Written Notice

- Written notice to known parties “upon receipt of written complaint”
- Sufficient time to allow respondent to prepare a response before any initial interview
- Must include:
  - Notice of grievance process, including any informal resolution process
  - Notice of allegations, in sufficient detail to allow respondent to prepare a response (names of known parties, conduct alleged, date and location of conduct, if known)

More Steps: Written Notice

- Must include:
  - Statement that respondent presumed not responsible and that responsibility will be determined at conclusion of grievance process
  - Notice of parties’ rights to have an attorney or non-attorney advisor and to inspect and review evidence
  - Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false evidence during the grievance process
- Must be supplemented if new allegations opened for investigation
Contents of an Investigation

- Burden of proof on school
- Certain treatment records cannot be obtained without voluntary, written consent
- No restriction of rights of parties to discuss allegations or gather or present evidence
- Same opportunities for others present during interviews or related proceedings (e.g., attorney or non-attorney advisor)
- Written notice to parties of date, time, participants, purpose, and location of each investigative interview with sufficient time to prepare
- All directly related evidence provided to parties and their advisors with 10 days to respond before report
- Written investigative report “fairly summarizes the relevant evidence” provided to parties and advisors at least 10 days before hearing or other determination of responsibility
Gathering Other Evidence

Warning! Hands off

- Rape shield (for Complainant) -- *unless*
  - Used to prove someone other than respondent committed the conduct or
  - Specific incidents related to the Respondent to show consent
- Medical records (treatment)
- Privileged information
Opportunity to Review Evidence

- Before the investigatory report is completed, evidence relating to the allegations must be sent to each party and advisor and should include all directly related evidence (including that which the school does not intend to rely upon and exculpatory and inculpatory evidence).
- Parties have 10 days to provide a written response.

Investigation report should include:

- Applicable policies and procedures
- Timeline of investigation
- Description of allegations
- Unbiased summary of evidence gathered, including interviews
- Credibility determination(s)
Investigation Report Writing

- Fairly summarizes all relevant evidence
- Provide the report to the parties and their advisors, if any, for their review and written response, at least 10 days before a hearing or other determination of responsibility
<table>
<thead>
<tr>
<th>TIX SH – Staff/Student</th>
<th>TIX SH – Students OR Sex/Gender Discrimination (Students)</th>
<th>TIX Sex/Gender Discrimination (Employees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>OIG handles through investigation &amp; provides investigation report</td>
<td>OIG handles through investigation &amp; provides investigation report</td>
<td>UCCS handles all roles</td>
</tr>
<tr>
<td>UCCS issues written determination</td>
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<td>Report outcome and findings of investigation to OSP and I&amp;I</td>
</tr>
<tr>
<td>UCCS provides OIG, OSP, and I&amp;I copy of written determination (10 business days)</td>
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<td>UCCS responsible for appeals</td>
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**Decision-maker(s)**

(Complaint)

- Cannot be the Title IX Coordinator or investigator
Determinations of Responsibility
34 C.F.R. 106.45(b)(6)

- Written cross-examination
- Each party allowed to submit written, relevant questions to be asked of another party or witness to the decision-maker, who will provide each party with the answers and the opportunity for follow-up questions

Rulings on Relevance in Written “Cross”

- Provide reasoning for irrelevance
- Admit and consider all relevant evidence
- Questions must be appropriate
- Identify exceptions
- No improper inference
The Decision

<table>
<thead>
<tr>
<th>Identify</th>
<th>Identify the allegations</th>
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<tbody>
<tr>
<td>Describe</td>
<td>Describe procedural steps taken</td>
</tr>
<tr>
<td>Cite</td>
<td>Cite potential policy violations</td>
</tr>
<tr>
<td>Summarize</td>
<td>Fairly summarize all relevant evidence</td>
</tr>
<tr>
<td>Provide</td>
<td>Provide statement of result, with rationale, for each allegation</td>
</tr>
<tr>
<td>Appeal</td>
<td>Appeal procedures</td>
</tr>
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Remember the Standard of Proof

Preponderance of the Evidence

Remedies

- Can be punitive/disciplinary
- Can be supportive measures or similar actions as well
- Can address individuals or larger community
Appeal Process

Process
- Available to both parties
- Appeal dismissal or determination

Bases for appeal (must impact outcome)
- Procedural issue
- New evidence
- Bias/conflict of interest
Appeal Process

- Notify party of appeal in writing
- Apply procedures equally for both parties
- Provide opportunity to submit written statement
- Issue written decision to both parties

Decision-maker (Appeal)

Cannot be the Title IX Coordinator or investigator or decision-maker (complaint)
Bias, Conflicts of Interest, and Other Fairness Concerns

The Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator must not have a conflict of interest or bias for or against Complainants or Respondents generally or for or against any individual Complainant or Respondent.

Also, they may not prejudge any matter before them.
Consider *perceptions*, not just reality:

- Institutional bias
- Your friendship or other relationship with the accused or their family
- Your personal characteristics
- Your personal conflicts (even if just perceived)
- Personality conflicts

Go back and think

What steps can you take to avoid:

- *Prejudgment*
- *Conflict of Interest*
- *Bias*?
Recordkeeping

Written Notice: Required

- Informal resolution notice
- Notice at start of investigation
- Dismissal notice
- Interview notices
- Report
- Notice why proposed questions not asked on cross and why
- Written determination and notice of appeal rights
Written Notice: Recommended

- Document information to Complainant at initial meeting, including supportive measures requested/provided
- Document evidence provided to both parties
- Document opportunity to ask questions, answers, follow-up questions, etc.

Recordkeeping

Must maintain the following for 7 years:

- Sexual harassment investigation documents, including:
  - Determination regarding responsibility
  - Recordings or transcripts of live hearing
  - Disciplinary sanctions imposed on Respondent
  - Remedies provided to Complainant
- Appeal and result
- Informal resolution and result
- Actions taken in response to a report of sexual harassment
- Actions taken in response to a formal complaint of sexual harassment
Recordkeeping

Responses to formal and informal complaints and actions taken in response should include:

• The basis for the school’s conclusion that its response was not deliberately indifferent
• Documentation that it has taken measures designed to restore or preserve equal access to the school’s education program or activity
• Supportive measures or, if no supportive measures are provided, the reasons why such a response was not clearly unreasonable in light of the known circumstances

Questions
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