

Title IX Review, Update, and Implementation

Nicole Cooper, Title IX Coordinator/Compliance Officer

ncooper@midland.edu

SSC 129, 432-685-4781

| Agenda

Purpose of Today

- Overview of Title IX
- Title IX Enforcement
- Timeline of Title IX History
- Key Definitions
- Policy Information
- Formal Grievance Process
- Employee Reporting Requirements
- Trauma Informed Response
- Pregnancy and Parenting Students
- Close-out

Title IX of the Education Amendments of 1972

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.

20 U.S.C. § 1681, et seq.



Title IX Enforcement

- All educational institutions that receive federal funds are subject to Title IX
- Failure to comply risks federal funds
- The Department of Education's Office for Civil Rights (OCR) enforces Title IX by:
 - Investigating complaints and entering agreed resolutions and
 - Compliance reviews and technical assistance
- Additional enforcement through private lawsuits



Current/Former Baylor students at rally in 2016

When does Title IX apply?

In Sexual Misconduct where:

- Complainant (alleged victim) or Respondent (alleged perpetrator) is enrolled in classes or employed by the institution
 - Non student or non employee of MC are not under our jurisdiction
- Against a person in the United States.
- The conduct allegedly occurred in an education program or activity
 - All education programs or activities, whether on or off-campus, and any building owned by a student organization that is officially recognized by institution.
- Definitions from 106.30 apply

Key Title IX-Related Issues

Sex-Based Discrimination

- Program Equity
- Recruitment, Admissions, Financial Assistance
- Employee Recruitment & Hiring
- Housing
- Pregnancy & Parenting Students
- Sex, Sexual Orientation, & Gender Identity
- Extra-curricular activities

Sexual Harassment

- Quid Pro Quo
- Hostile Environment
- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking

Retaliation

| Agenda

Purpose of Today

- Overview of Title IX
- Title IX Enforcement
- Timeline of Title IX History
- Key Definitions
- Policy Information
- Formal Grievance Process
- Employee Reporting Requirements
- Trauma Informed Response
- Pregnancy and Parenting Students
- Close-out

Title IX Timeline

Obama Administration - 2011

Archived Information



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 4, 2011

Dear Colleague:

Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime.

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in

Title IX Timeline

Backlash: Increased Respondent Litigation

- From 2011-2013, estimated 32 percent of Title IX lawsuits against institutions were filed by respondents/accused. United Educators Report, Confronting Campus Sexual Assault (January, 2015).



- From 2013-2014, estimated 76 percent of Title IX lawsuits filed by respondents/accused. NACUA (National Association of College and University Attorneys) Notes, V1, No. 4 (May 18, 2016).

Title IX Timeline

Trump Administration – 2020

- More equity throughout the grievance process for both respondent and complainant.
- Uniform standards for students, staff, & faculty
- Independent decision maker
- Formal complaint
- Live hearings, cross examinations



Title IX Timeline

Trump Administration – 2020 *Current guidance*

Heightened Standard for Sexual Harassment

- 1. Any instance of quid pro quo harassment by a recipient's employee;
- 2. Any unwelcome conduct that a reasonable person would find so severe, pervasive, **and** objectively offensive that it denies a person equal educational access; or
- 3. Any instance of sexual assault (as defined in the Clery Act) “Big 4”

Scope of Proposed NEW Regulations

**U.S. Department of
Education Releases
New Title IX
Regulations**



October 2023: New regulations from the Biden Administration.

- Lower the bar for TIX sexual harassment
- More cases = more resolutions
- Remove some of the more formal requirements
- Increased emphasis on PnP students

Key Definitions

- **Title IX Sexual Misconduct.** Conduct that allegedly occurred against a person in the United States, in College’s Education Program or Activity, on the basis of sex, and that satisfies one or more of the following:
 - i. **Quid Pro Quo.** A College employee conditioning the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct;
 - ii. **Severe, Pervasive, and Objectively Offensive Conduct.** 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 College’s Education Program or Activity. Without limiting the foregoing, the following types of conduct are deemed to meet this severe, pervasive, and objectively offensive standard:
 1. “Sexual Assault” as defined in 20 U.S.C. § 1092(f)(6)(A)(v);
 2. “Dating Violence” as defined in 34 U.S.C. § 12291(a)(10);
 3. “Domestic Violence” as defined in 34 U.S.C. § 12291(a)(8); or
 4. “Stalking” as defined in 34 U.S.C. § 12291(a)(30).

Key Definitions

- ***Complainant.*** An individual, who must be participating or attempting to participate in the College's Education Program or Activity, who is alleged to be the victim of conduct that could constitute Title IX Sexual Misconduct.
- ***Respondent.*** An individual who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Misconduct.
- ***Reporting Party.*** An individual or entity (in the case of the College), other than the Complainant, who reports an alleged violation of this regulation.

Key Definitions

- ***Grievance Process.*** The process of addressing Formal Complaints of Title IX Sexual Misconduct before the imposition of any disciplinary or other actions that are not Supportive Measures against a Respondent.
- ***Supportive Measures.*** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.
- ***Informal Resolution.*** An alternative to the Grievance Process that may be offered and facilitated by the College following the filing of a Formal Complaint and upon the voluntary, written consent of the parties.

One Policy, Two Processes



Employee Required Reporting

- *Employee Obligation to Report.* Texas law requires any employee of a college or university in Texas to report to the Title IX Coordinator or Deputy Coordinator any information regarding an alleged incident of sexual harassment, sexual assault, dating violence, or stalking, committed by or against a person enrolled at or employed by the institution at the time of the incident. The law requires colleges to terminate employment for employees who fail to report such matters and imposes criminal penalties of up to a year in jail.

How to Receive a Disclosure



Mandated Reporter

Explaining Your Duty to Report

Strategies and Ideas to Consider When Explaining Your Duty to Report



Turn it into a conversation and be prepared to ask questions.

You may be inclined to rattle off your mandatory reporter language all at once, but that can be overwhelming for the other person.

Explain your duty to report in manageable chunks and ask if they have questions as you go along.



Encourage them to tell you what happened.

It's important for the other person to know that you care and, in addition to your duty to report, you want to help them however you can.

Encourage them to share but avoid pushing them to provide the entire story.



Frame your duty to report as one designed to help them get the support they need.

Your duty to report stems from your institution's commitment to getting its community members the information and resources they need to make an informed decision about next steps, if they want to take any.



Be clear about the difference between private and confidential.

It's important not to promise confidentiality if you are not a confidential resource.



Be able to answer questions about the next steps.

Although you don't need to know all the details, sharing general information and resources is helpful.



Be calm.

The other person might be caught off guard by your duty to report, so it's important that you remain calm.

You may find it helpful to practice having this conversation, either by yourself or with a coworker, to find the language that works for you.

Pregnancy & Parenting Students

- Protection extends to students who are pregnant or who have either had a false pregnancy, termination of pregnancy, have gone through childbirth, or are recovering from any of those conditions.
- SLCC Recent Case*
- Accommodations Included:
 - Comfortable seating in classroom
 - Providing a chair during sections with a lot of standing
 - Allowing breaks to breastfeed
 - If due to pregnancy, childbirth, or recovery:
 - Rescheduling tests or exams
 - Excusing absences
 - Providing alternatives to make up missed work

Thank you!



- Contact me if you are interested in joining the Title IX team!
- Contact me if you have questions about the SOS Fund
- Thank you all again ☐

References

- *Dunn, Timothy, J.D.; Hambleton, Mandy, M.S.; Morris, Leslee, J.D.; Pacelli, Kim, J.D.; Sokolow, Brett A., J.D.; Vincent, Joseph, M.L.S.; ATIXA Title IX Coordinator and Administrator. Coordinator One: Foundations; 2023 ATIXA*
- *Dunn, Timothy, J.D.; Hambleton, Mandy, M.S.; Morris, Leslee, J.D.; Pacelli, Kim, J.D.; Sokolow, Brett A., J.D.; Vincent, Joseph, M.L.S.; ATIXA Title IX Coordinator Two: Additional Topics for New and Experienced Coordinators. 2023 ATIXA*