



# The New Role of the Title IX Coordinator

Presented by  
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# Today's Presentation

- Recap and Overview of Title IX Sexual Harassment Complaint Process
- Implementing a revised Title IX Program
- The Title IX Coordinator's role in the Complaint Process



# RECAP AND OVERVIEW OF TITLE IX COMPLAINT PROCESS

# Recap

- Final Rule published 5-19-2020 (85 Fed Reg 30026)
- Effective August 14, 2020
- Amends 34 CFR Part 106
- 2011 Q&A and 2001 OCR guidance remain good to the extent consistent with Final Rule

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# Roles

| Title                           | Responsibilities  | Training   | Status  |
|---------------------------------|---|--|---|
| Title IX Coordinator            | Intake reports and complaints, initiate formal complaint, supportive measures       | Sexual harassment definition, scope of education program, how to conduct and investigation, grievance procedure (hearing, appeals informal resolution), impartiality | Must be institution employee<br>Cannot serve as decision-maker          |
| Investigator                    | Conduct a fair, objective and impartial investigation                               | Impartiality, how to conduct an investigation, issues of relevance, rape shield, report-writing  | Employee or 3 <sup>rd</sup> party<br>Cannot serve as decision-maker     |
| Decision-maker                  | Evaluate evidence, determine relevancy during hearing, make and issue determination | Sexual harassment, hearing process, technology to be used in hearing, issues of relevance, evidence, rape shield   | Employee or 3 <sup>rd</sup> party<br>Cannot serve in any other capacity |
| Advisor(s)                      | Question opposing party and witnesses during hearing                                | None required  | Party provided<br>Employee or 3 <sup>rd</sup> party                     |
| Informal Resolution Facilitator | Conduct informal resolution process   | Informal resolution process  | Employee or 3 <sup>rd</sup> party                                       |

# Title IX Complaint Process Overview

- Formal Complaint Received by Title IX Coordinator
- Optional Informal Resolution Process
- Investigation
- Live Hearing
- Decision and Remedial Measures
- Appeals



# TITLE IX POLICY IMPLEMENTATION



# Implementing a Title IX Policy

- Title IX Coordinator responsibility
  - At least one employee
- Publication and Dissemination of Notice of Non-discrimination Based on Sex
- Publication and Dissemination of a “Prompt and Equitable Grievance Procedure” applicable to students and employees
- Publication of training materials (Title IX Coordinators, investigators, decision-makers, individuals who facilitate informal resolution process) must be posted to the website

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# OCR Resources

- Webinar: Title IX Regulations Addressing Sexual Harassment
- OCR Blog
- Email OCR OPEN Center with questions  
(T9questions@ed.gov)

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# Title IX Coordinator Visibility

- Contact information must be posted on website and in each handbook or catalog provided to prospective/current students and employees
  - Name or title, office address, email address, and telephone number
- Copy of grievance procedures and grievance process, including how to report or file a complaint and how the institution will respond
  - must be distributed to all prospective/current students and employees
- Anyone can report sex discrimination (including sexual harassment) even if they are not the victim by mail, telephone email or in person.

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# Training

- Title IX Coordinator must ensure that Title IX “personnel” are trained on:
  - Definition of sexual harassment in the Final Rule
  - Scope of the institution’s education program or activity
  - Conducting an investigation and grievance process including hearings, appeals, and informal resolution processes
  - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

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# Notice

- Title IX Coordinator must ensure that the institution responds when:
  - The institution has actual knowledge of sexual harassment
  - That occurred within the institution's education program or activity
  - Against a person in the United States (no study abroad programs)
- Institution violates Title IX when its response to sexual harassment is clearly unreasonable in light of the known circumstances (deliberate indifference)

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# Reporters

- Identify which employees must, may or must only with Complainant's consent report to the Title IX Coordinator
- Triggers notice

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# Supportive Measures

- Title IX Coordinator must promptly and confidentially contact Complainant and offer supportive measures.
- Offered regardless of whether or not Complainant has filed a Formal Complaint
- Consider Complainant's wishes
- Title IX Coordinator must explain the process of filing a formal complaint.
- Title IX Coordinator responsible for implementation

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# Supportive Measures

- Required in all cases (formal complaint not needed)
- Individualized, appropriate and reasonably available
- Designed to preserve or restore equal access
- Provided without charge
- Non-disciplinary and non-punitive
- Available to Complainant and Respondent, as applicable
- Confidential

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# Supportive Measures

- Designed to:
  - Restore or preserve access to the institution's education program or activity
  - Without unreasonably burdening the other party
  - Protect the safety of all parties and the institution's educational environment, and
  - Deter sexual harassment

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# Examples of Supportive Measures

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus

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# Policy Considerations

- Standard of proof
- Mandatory reporters
- Definition of consent
- Informal resolution
- Hearing format and protocols
- Discretionary dismissal
- Process for non-Title IX misconduct

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# TITLE IX COORDINATOR ROLE IN THE COMPLAINT PROCESS

# Formal Complaint

- Must ensure that all formal complaints are investigated
- A formal complaint is signed by a Complainant or Title IX Coordinator alleging sexual harassment against a Respondent, requesting an investigation
- Complainant must be a current or prospective student or employee
- Defer to Complainant's wishes as to whether to pursue an investigation
- Title IX Coordinator can sign a complaint to initiate an investigation if they determine that not pursuing would be deliberately indifferent or that not pursuing a claim would be harmful to the campus community

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# Complainant

- Must be alleged victim unless parent or legal guardian has a legal right to act on behalf
- Note that any person may report sex discrimination, including sexual harassment to the Title IX Coordinator
- Person reporting does not have to be the victim of conduct that could constitute sex discrimination or sexual harassment
- Only a complainant may file a formal complaint that initiates a Title IX grievance procedure

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# Complaint Dismissal

- The institution *must* dismiss a Formal Complaint if:
  - Allegations do not meet the definition of sexual harassment
  - Did not occur in the institution's education program or activity against a person in the United States
- The institution *may* dismiss a Formal Complaint if:
  - Complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein
  - Respondent is no longer enrolled or employed by the institution
  - If specific circumstances prevent the institution from gathering sufficient evidence to reach a determination.

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# Complaint Dismissal

- If a complaint is dismissed, the institution must give the parties written notice of a dismissal (mandatory or discretionary) and include the reason for dismissal.
- institution may still address the allegations under the Conduct Policy

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# Informal Resolution

- Discretionary—can be used so long as both parties give voluntary, informed, written consent to attempt informal resolution
- Any person who facilitates an informal resolution must be trained
- An institution may not require a waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment as a condition of enrollment, employment, or enjoyment of any other right

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# Informal Resolution

- Can only be utilized when there is a formal complaint
- At any time before resolution, a party can withdraw from the informal resolution process and resume the grievance process
- Cannot be used to resolve allegations that an employee sexually harassed a student

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# Investigations

- Title IX Coordinator can investigate
- Must be free from conflicts of interest and bias against Complainant or Respondent
- Institutions can reserve the right to have a third party investigate

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# Advisors

- Parties have the right to select an advisor during an investigation and hearing
- Can be an attorney, but does not have to be
- If the Complaint goes to a live hearing, the parties must have an advisor
- If the party does not have an advisor, the institution must provide, without charge, an advisor of the institution's choice
- An institution-appointed advisor is not required to be an attorney
- Only advisors may conduct cross-examination of witnesses

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# Investigation

- Impartial, fair and objective
- Burden on the institution
- No gag-orders
- Right to an advisor
- Dismissal
- Written notice with sufficient time to prepare
- Opportunity to inspect and respond to evidence
- Investigative report

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# Investigation

- Send notice to parties of the allegations upon receipt of a formal complaint
- Send notice of any investigative interviews, meetings or hearings
- Provide both parties an equal opportunity for the parties to present fact and expert witnesses and other evidence
- Institutions may consolidate formal complaints where the allegations arise out of the same facts

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# Investigation

- Send the parties evidence directly related to the allegations at least 10 days prior to any hearing for the parties to review and respond
- Complaints against multiple respondents or by multiple complainants may be consolidated
- May consolidate investigations where the complaints arise out of the same facts or circumstances
- Must send the parties an investigative report that fairly summarizes relevant evidence at least 10 days prior to a hearing

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# Live Hearings

- Postsecondary institutions must provide a live hearing
- Title IX Coordinator must ensure these requirements are met
- Requirements for a live hearing include:
  - Opportunity for parties' advisors to examine and cross-examine witnesses, including challenging the credibility of witnesses
  - Examinations must be direct, oral, and in real time
  - Parties may be required to stay in separate rooms with a live video+audio connection
  - Only relevant questions may be asked; prior sexual conduct is not relevant

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# Live Hearings

- Elementary and secondary schools have different hearing requirements:
  - No live hearing required
  - Each party must have opportunity to submit written questions of witnesses
  - Answers from witnesses must be provided to parties
  - Prior sexual conduct of complainant is not relevant

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# Live Hearings

- Live hearings are conducted by an appointed decision-maker (can be more than one person)
- Title IX Coordinator cannot be the decision-maker
- Decision-maker must receive specific training
- Decision-maker must issue a written determination of responsibility

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# Determination

- Written determination of responsibility must:
  - Use published standard of evidence
  - Identify the allegations constituting sexual harassment
  - Describe procedure from formal complaint through hearings
  - Make findings of fact and conclusions
  - Provide a rationale for the outcome on each allegation and imposition of any sanctions
  - State the procedures and allowable bases for any appeal
  - Be provided simultaneously to both parties

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# Remedies

- Title IX Coordinator is responsible for implementation
- Required to be provided to a Complainant when a respondent is found responsible
- Must be designed to maintain Complainant's equal access to education and may include supportive measures
- Remedies do not need to be non-disciplinary or non-punitive and do not need avoid burdening the respondent.

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# Appeals

- Policy must provide for appeals for both parties.
- The bases for an appeal must include:
  - procedural irregularity affected the outcome of the matter
  - newly discovered evidence that could affect the outcome of the matter
  - Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter
- Institutions may offer additional bases for appeal that apply equally to both parties

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# Retaliation

- Title IX Coordinator must ensure that the institution's policy effectively prohibits retaliation
- Policy must prohibit intimidation, threats, coercion, or discrimination for making a complaint or participating in process
- Retaliation does not have to be on the basis of sex or involve sexual harassment

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# Retaliation

- Retaliation complaints may use the same grievance process as sexual harassment complaints
- Institution must keep identities of complainant, respondent, and witnesses confidential except as permitted by FERPA
- The following do not constitute retaliation:
  - First Amendment free speech
  - Charging a person with a code of conduct violation for making a false statement

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