

Title IX Coordinator Training Online Course

Class One: Definitions, Jurisdiction and Preliminary Matters

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Training Course Does Not Constitute Legal Advice

Course Overview:

- **Class One:**
Definitions, Complaints, Supportive Measures, Dismissals, Training, Policies and Recordkeeping
- **Class Two:**
Investigations, Hearings, Evidence, Burden of Proof, Reports, Remedies
- **Class Three:**
Anatomy of an OCR Investigation
- **Class Four:**
Title IX and Athletics

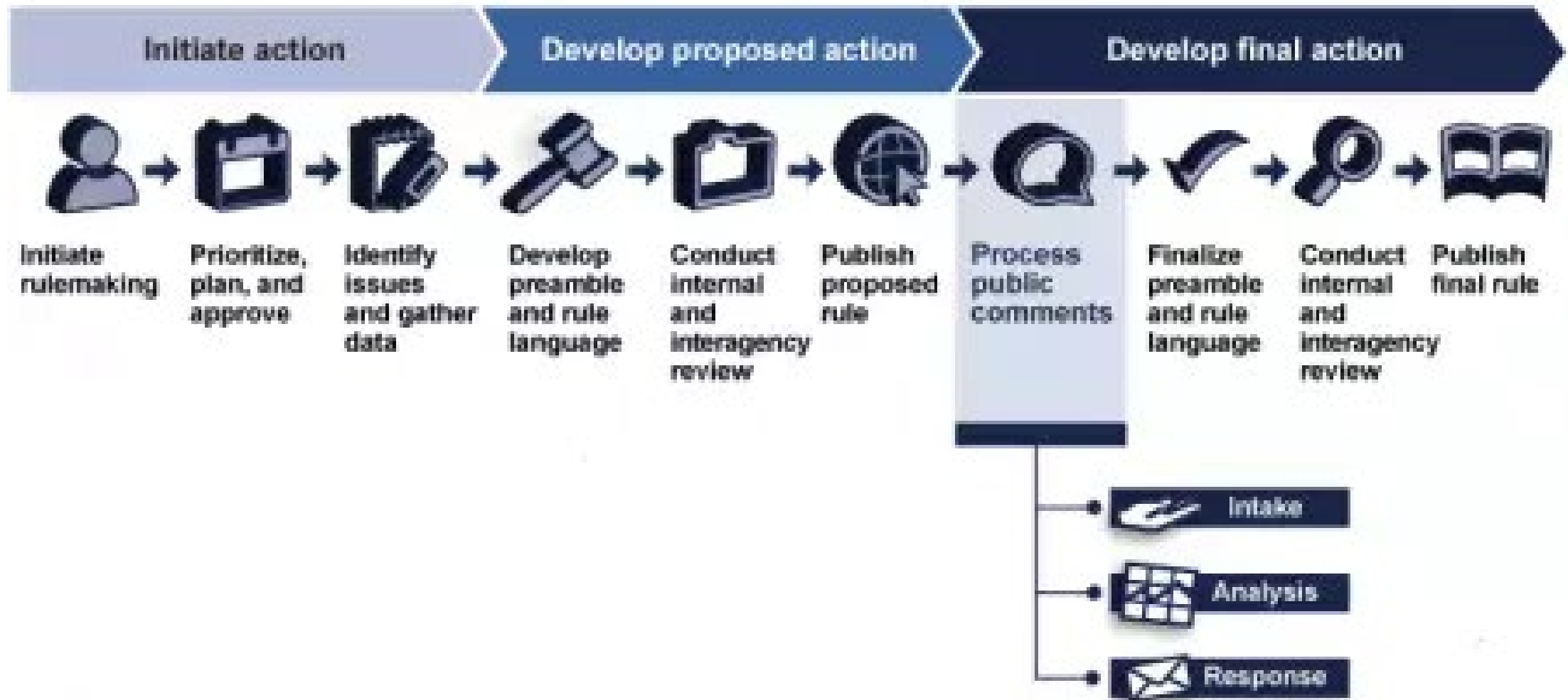


Class One

- What Rules Apply?
- Definitions
- Jurisdiction
- Formal Complaints
- Supportive Measures
- Dismissals
- Informal Resolution
- Training
- Policies and Recordkeeping



Federal Rulemaking Process:



Biden Administration NPRMs to Final Regulations

- April 2021: OCR letter to stakeholders announcing a comprehensive review of ED's existing Title IX regulations, etc.
- May 2021: Notice of virtual public hearing June 7–11, 2021
- July 2021: Questions and Answers on the Title IX Regulations on Sexual Harassment, including policy examples
- August 2021: ED announces it will no longer enforce the requirement that “prohibits a decisionmaker from relying on statements that are not subject to cross examination.”
- June 2022: Title IX's 50th Anniversary, Department issued NPRM. Comments due by 9.22. More than 224,000 comments posted.
- February 2023: OCR issues athletic resource guide, "Title IX and Athletic Opportunities in Colleges and Universities"
- April 2023: OCR issues NPRM related to eligibility standards for male and female teams.
- Expected October 2023 publication of final rules related to both NPRMs.

In the meantime:

- The 2020 existing rules control, and any education institution receiving federal funds must obey them.
- In addition, the NPRM is just that – proposed rulemaking – & ONLY the current rules apply.
- The current regulations, the proposed regulations (in the NPRM), and the Final Rules may not align.
- We will be focusing on the rules that apply NOW.



Definitions

Definition of Sexual Harassment

Quid Pro Quo

- Conditioning provision of an aid, benefit or service on participation in unwelcome sexual conduct
- Carried out by an employee

Hostile Environment

- Unwelcome sexual conduct
- “So severe, pervasive, *and* objectively offensive” that it
- “Effectively denies equal access” as
- “Determined by a reasonable person”
 - “[S]tanding in the shoes of the complainant.” (Preamble, p. 514)

Don't Forget Clery

Clery Definitions

- **Sexual Assault** – a forcible or non-forcible sex offense under the FBI UCRS (as defined by the Clery statute) including NIBRS
- **Dating Violence** – violence by a person who is or has been in a romantic or intimate relationship (Clery statute)
- **Domestic Violence** – violence by a current or former spouse or intimate partner, co-parent, living partner, youth or other under state law
- **Stalking** – fear for safety or safety of others or suffer substantial emotional distress

Complainant & Respondent

- **Complainant** – an individual who is alleged to be the victim of conduct that could be sexual harassment
- **Respondent** – an individual who has been reported to be the perpetrator of conduct that could be sexual harassment





Actual Knowledge

- Institution has actual notice of sexual harassment or allegations when reported to the:
 - Title IX Coordinator(s), OR
 - An Official With Authority to Take Corrective Actions (OWA)
- Not when reported to a respondent
- Not when reported to others, even if the school has decided that they may or must report
 - (But ... other causes of action may exist created by the existence of a policy or contractual provision requiring reports by certain non-OWA employees)

Jurisdiction: Education Program or Activity



- Locations, events, or circumstances over which IHE exercises substantial control over *both* the respondent and the context in which the sexual harassment occurred, **or**
- Any building owned or controlled by a recognized student organization, **and**
- Against a person in the United States.

Filing a Formal Compliant

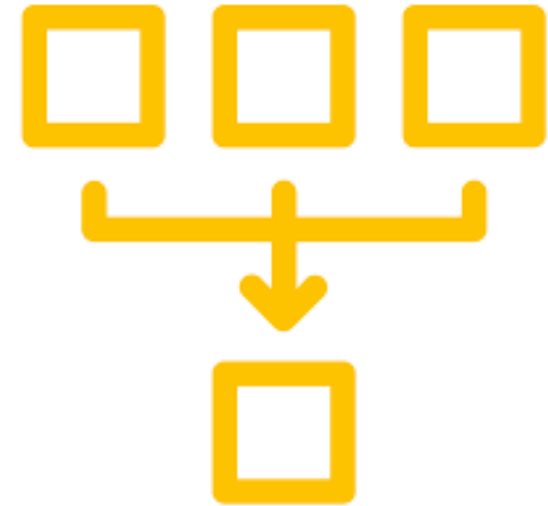


Formal Complaints

- Requests that the school investigate the allegations of sexual harassment.
- Filed by the Complainant participating in or attempting to participate in the school's education program or activity in person, by mail, email or other approved method.
- Signed by Complainant or by the Title IX Coordinator.
- PLEASE NOTE: Title IX Coordinator may file even if the Complainant is not associated in any way to protect other students.

Complaints that Allege more than one Respondent

- *May* consolidate formal complaints against more than one respondent, or by one party against the other party
 - Allegations arise out of the same facts or circumstances.
- Complaints may be filed and sanction imposed *only* against individuals, not groups



Written Notice of Allegations

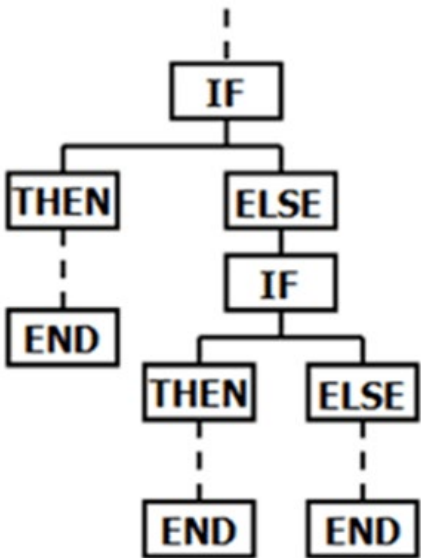
- Notice of the grievance process.
- Notice of the allegations, including sufficient details and time to prepare a response *before* the initial interview.
- Statement that the Respondent is presumed not responsible.
- Right to advisor of choice.
- Right to inspect and review evidence.
- Any prohibition of false statements or information.

Provide updated notice with any later discovered additional allegations.



**IMPORTANT
NOTICE**

Dismissals



Mandatory/Discretionary Dismissals



Mandatory if:

- Conduct alleged would not constitute sexual harassment even if proved;
- Conduct alleged did not occur in the IHE's education program or activity; or
- Conduct alleged did not occur in the U.S.



Discretionary If:

- Complainant notifies the Title IX Coordinator in writing of a wish to withdraw complaint or any allegations in it;
- Respondent is no longer enrolled or employed; or
- Specific circumstances prevent sufficient gathering of evidence to reach a determination.

Dismissal Results





If a formal complaint is dismissed, school must:

- Provide written notice of dismissal and reasons to both parties.
- Provide an appeal process.
- The matter *may* proceed under another provision, policy or code.

Supportive Measures

Response to a Report

- Offer *supportive measures* promptly to the Complainant. 
- Explain the process for filing a formal complaint.
- Consider the Complainant's wishes as to supportive measures. 
- Follow a grievance process that complies with the regulations *before* imposing any disciplinary sanctions or other actions that are not supportive measures against the Respondent.



Supportive Measures



- Available to complainant and respondent
- Non-disciplinary and non-punitive
- Treat complainant and respondent equitably
- No fee/charge to either party
- Restore or preserve equal access without *unreasonably* burdening the other party
- Confidential to the extent possible
- Comparable to Clery accommodations and assistance

Informal Resolution

Informal Resolution Requirements



- At any point in the formal process
 - BUT only after a formal complaint is filed
 - May return to formal process if informal resolution does not resolve the matter
- May address all forms of sexual harassment when the institution deems it appropriate
 - *EXCEPT* – Allegations of employee against student harassment
- Process must be facilitated by trained individuals with no conflict of interest or bias
- Written, voluntary consent by the parties.

Informal Resolution Process

- Parties must be given written notice of:
 - The allegations and the requirements of the informal resolution process;
 - The right to withdraw from the informal procedure at any time prior to agreeing to a resolution;
 - The circumstances precluding parties from resuming the formal complaint arising from the same allegations; and
 - Any consequences associated with informal resolution, including records that will be maintained or could be shared.



Training?

The Regulations (Title IX Personnel)



- Title IX Coordinators
- Investigators
- Decision-makers
- Anyone who facilitates an informal resolution process
- And if NCAA Member school – student athletes and athletics staff per NCAA policy (discussed more fully in Class 4)

Consider Training Others, even though not Required by the Regulations

- Title IX staff who are not identified by the regulations
- Officials With Authority to take corrective measures
- Other individuals with the responsibility to report sexual harassment – former Responsible Employees
- Campus Safety Authorities (CSAs)
- The Campus Community
- Confidential employees

Elements of a Good Training Program

Necessary Components



- Planning & Preparation
 - Who should train and be trained?
 - Required
 - Others
 - How – in person, virtual or hybrid?
 - When?
- Avoiding bias and stereotypes
 - Whether or how to use trauma-informed training
- Transparency
 - Post most current training materials publicly on website or make available for public inspection

Required Training

Title IX Personnel

The definition of sexual harassment;

The scope of the institution's education program or activity;

How to conduct an investigation and the grievance process;

How to serve impartially; and

The impact of intersections of intersectionality.

Title IX Investigators

- Conducting a fair and thorough investigation;
- Determining relevance in order to prepare an investigative report that fairly summarizes relevant evidence. (Discussed next class.)
- Also consider:
 - Questioning
 - Institutional policies
 - Responsibility for proposed findings and conclusions
 - Redacting privileged information
 - Coordinating investigation with supportive measures

Don't Forget ...

➤ **Decision-Makers**

- Technology to be used at a live hearing.
- Issues of relevance, including how to rule on evidence during a hearing and how to apply the rape shield protections provided only for complainants.
- Presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Also consider: managing the process, hearing protocol, preparing findings and conclusions

➤ **Informal Resolution Facilitators**

➤ **Athletics Department: Students and Staff (Annual)**

- NCAA Policy



Auditing Training Materials

- Who was trained
- Was training effective
 - Measured outcomes
 - Observed outcomes
- How often to monitor
- Documenting monitoring



**Policies:
Management,
Notice, and
Some
Reminders**

Managing the Policies

Developing policies	Monitoring policies
<ul style="list-style-type: none">• Existing institutional policies• Existing laws, agreements & practices• Identify conflicts and concurrences and harmonize or change• <i>Include stakeholders</i>	<ul style="list-style-type: none">• Changes in law, regulations, guidance or institutional needs• Changes in related laws or guidance, e.g. FERPA, state APA• Effectiveness• <i>Include stakeholders</i>

Notification and Dissemination

Title IX Coordinator:

- Contact info must be prominently displayed on the institution website, and in each handbook or catalog made available to applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations with CBAs.

Nondiscrimination Policy, including the following statements:

- The institution does not discriminate on the basis of sex in education programs or activities it operates.
- The institution is required by Title IX not to discriminate.
- The institution's nondiscrimination policy extends to admission and employment.
- Inquiries about the application of Title IX may be referred to the school's Title IX Coordinator, to OCR, or to both.

Adopt & Publish

- Adopt and publish:
 - grievance procedures that provide for the prompt and equitable resolution of student *and* employee complaints alleging *any* action prohibited under Title IX.
 - a grievance process that complies with 106.45 for formal complaints as defined in 106.30.

Notice

NOTICE: of the school's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the school will respond.

MUST BE PROVIDED TO: applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the school.

Policy Decision Point: Framework

All-in-One Policy:

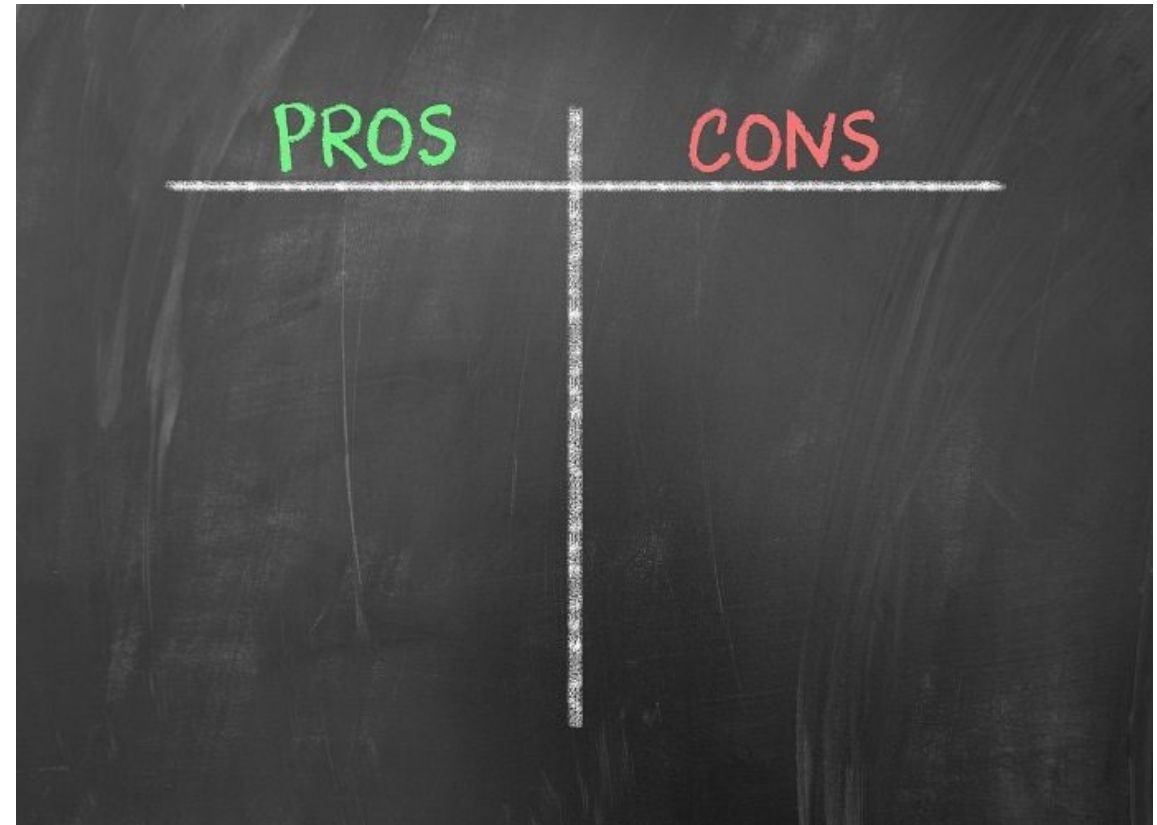
1. Treat all the Same; or
2. Decision Trees

Two Policies: If not TIX, then ...

1. Title IX Regulation+
2. Everything Else

Three plus:

1. TIX Regulation Conduct
2. Other Sexual Misconduct
3. Other Prohibited Conduct



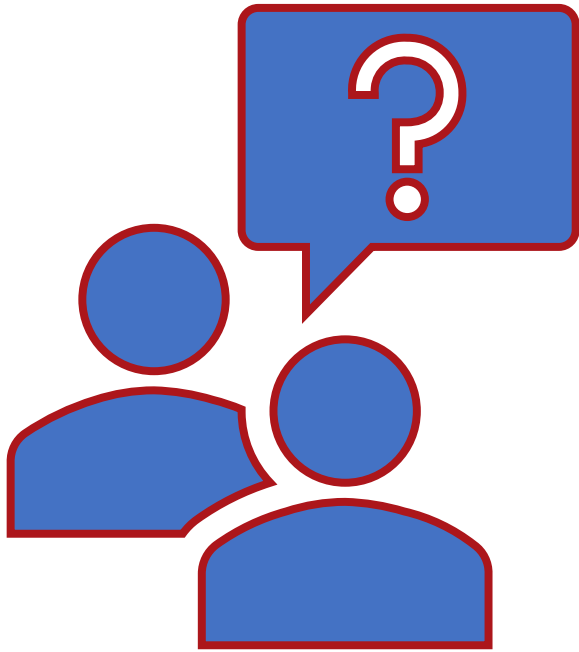
Record Retention 7 Years



- **For formal complaints:**
 - Investigation
 - Determination of responsibility
 - Transcripts or recordings of hearings
 - Sanctions and/or Remedies, if any
 - Appeal, if any, and result
 - Informal resolution and result, if any
- **For all reports, regardless of whether there is a formal complaint:**
 - Actions taken and supportive measures, if any, provided in response to a formal complaint.
 - Basis for a determination that the institution was not deliberately indifferent.
 - Measures to restore or preserve equal access or reasons why not providing support was not clearly unreasonable under the circumstances.
- **All training materials for Title IX personnel**

**And
Athletics!**





Questions?

Note

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