



# Title IX Coordinator Training: Fundamentals of the August 2020 Regulatory Requirements

## Resources List

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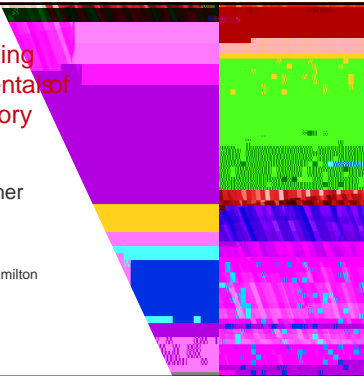
### Required Reading

[Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#) (Title IX Regulations Addressing Sexual Harassment, 34 CFR Part 106)

# Title IX Coordinator Training Online Course: Fundamentals of the August 2020 Regulatory Requirements

## Module 1: Jurisdiction and Other Threshold Topics

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## Course Overview

- Jurisdiction and Other Threshold Topics
- Formal Complaints, Investigations and Grievance Procedures
- Policy and Training Obligations



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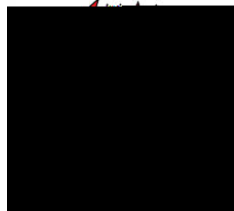
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## Title IX Final Regulation

- Effective August 14, 2020
- Where to Begin
  - Inventory
  - Implementation Plan



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PLAN





## CLERY DEFINITIONS

- Sexual Assault– a forcible or non forcible sex offense under the FBI UCRs as defined by the Clery statute
  - Rape attempted rape, sodomy, fondling, statutory rape
- 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 other or suffer substantial emotional distress

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## COMPARE

- Institution Conduct Code
- Court standards
- Title VII
- State law

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WHO?

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## IN ADDITION TO STUDENTS... APPLICABLE EMPLOYEES

§106.51 Employment

- “No person shall, on the basis of sex, be excluded from participation in, or denied benefits of, or be subjected to discrimination in employment....”
- Remains unchanged by current amendments

## TITLE VII – SEXUAL HARASSMENT DEFINITION

- Conduct
  - Unwelcome sexual advances
  - Requests for sexual favors
  - Other verbal or physical conduct of a sexual nature
- Viewed by a reasonable person in the Complainant's position

## WHEN...

- Submission becomes a term or condition of employment
- Rejection is used as the basis for an employment decision
- The conduct unreasonably interferes with work performance or creates a hostile, intimidating or offensive environment

## EMPLOYEE REEMPLOYMENT

- Employer's knowledge
  - Knew or should have known
- Immediate and appropriate corrective action
  - Reasonably calculated to end the harassment and prevent recurrence





## OTHER ISSUES

- Procedures
  - Serial or parallel
  - Clearly identify what applies to employees
- Student employees
- Clergy obligation to employees
- Notification to all employees and applicants (§106.8)

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## WHERE?

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## JURISDICTION

- No distinction between on or off campus
  - If in a location, at an event, or in circumstances that meet the definition
- Only in the United States
  - Harassment must occur against a person in the United States
  - Study abroad & foreign employment

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## BUT DON'T FORGET...

- May apply other institutional conduct standards and procedures
- Clery applies to students and employees regardless of location.
- Title VII applies to U.S. citizens working for U.S. corporations abroad.

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## EDUCATION PROGRAM OR ACTIVITY

- §106.44(a) Locations, events, or circumstances over which IHE exercises substantial control over both the respondent and the context in which the sexual harassment occurred
- Any building owned or controlled by a recognized student organization
- Training on the scope of the institution program or activity

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## WHEN?

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## ACTUAL KNOWLEDGE

- §106.30(a): Notice to Title IX Coordinator or any official who has authority to institute corrective measures
- Sexual harassment or allegations of sexual harassment
- No vicarious liability, constructive notice or "should have known"

## OFFICIAL WITH

## RETALIATION §106.71(a)

- No retaliation by any person to interfere with any right “secured by Title IX”
- No retaliation for
  - Making a report or complaint
  - Participating or refusing to participate
- Filing charges regarding conduct that arises out of the “same facts or circumstances but does not involve sex discrimination”

## CONFIDENTIALITY

- IHEs must keep confidential the identity of any individual
  - Who has made a report or filed a complaint
  - Who has been reported as a perpetrator
  - Who has been a witness
- Exceptions
  - FERPA
  - Legal obligations
  - Carry out a report



## INSTITUTION RESPONSE

- Promptly contact the Complainant to discuss the availability of supportive measures
  - Consider complainant's wishes
  - Make clear available with or without formal complaint
- Explain the process for filing a formal complaint
- Treat complainants and respondents equitably
- Consider Clery obligations

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## SUPPORTIVE MEASURE §106.30(a)

- Non disciplinary non punitive individualized services
  - Impose action that are disciplinary sanction or not supportive measure only after a grievance process
- Appropriate, reasonably available, free to complainant or respondent
- Restore equal access without unreasonably burdening the other party
- Confidential, if possible

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## EMERGENCY REMOVAL §106.44(c)

May remove respondent from education program or activity if:

- Conduct an individualized safety and risk analysis,
- Determine that respondent poses an immediate [imminent] threat to the physical health or safety of anyone justifying removal,
- The threat arises from the allegations of sexual harassment, and
- Provide opportunity for respondent to challenge removal immediately thereafter.

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Module 2: Formal Complaints,

r, Melinda Grier Consulting  
e, Partner, Holland & Knight LLP LLP



## The Formal Complaint– Consolidation

- May consolidate formal complaints if sexual harassment allegations:
  - Are against more than one respondent, or
  - Are by more than one complainant against one or more respondents, or
  - Are by one party against the other party (i.e., "counterclaim").
- As long as the allegations of sexual harassment arise out of the same facts or circumstances and are so intertwined that the allegations directly relate to all of the parties.

§106.45(b)(4)

## Written Notice of Allegations

Written notice of the allegations to the parties must include:

- Notice of the to the parties

## Mandatory Dismissal of a Formal Complaint

If the conduct alleged:

- Would not constitute Title IX sexual harassment even if proved,
- Did not occur in the IHE's education program or activity, or
- Did not occur in the United States.

§106.45(b)(3)(i)

## Discretionary Dismissal of a Formal Complaint

If:

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

§106.45(b)(3)(ii)

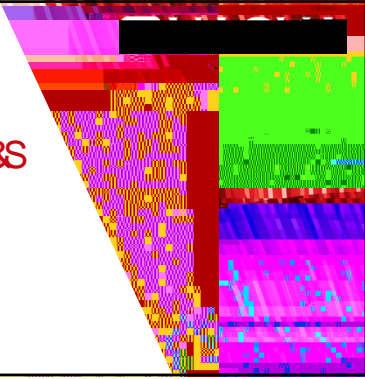
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## Advisors

- IHE must provide the parties with the same opportunities to have others present during any grievance proceeding including the opportunity to be accompanied by an advisor of their choice.
- Advisor may be, but is not required to be, an attorney.
- IHE may not limit the choice or presence of advisor for either the P-Ú the-Å Å δÁ ÎÀ !ð Å#€Ö ;çÈ 8 Mð \$Á" Üs € 19 xF(#(†\$ÎÅ ðÄD0Ð 0



INVESTIGATIONS  
&  
GRIEVANCE  
PROCEDURES



Investigations and Grievance Procedures



## Investigative Report

- Must fairly summarize relevant evidence.
- IHE must send the investigative report to the parties (and their advisors) at least 10 days before the hearing for their review and



## Relevancy Determinations

- Before a party or witness answers a question, the decisionmaker must determine whether it is relevant and explain any decision to exclude the question as not relevant.
- Questions and evidence about complainant's sexual predisposition or prior sexual behavior, unless to prove that someone other than respondent committed the conduct alleged or, if concerning specific incidents of complainant's conduct with respondent, offered to prove consent, are not relevant.

§106.45(b)(6)(i)

## Relevancy Determinations (cont.)

### Preamble:

- It is enough for the decisionmaker to say the question is not probative of any material fact.
- The decisionmaker may not require questions in writing in advance of hearing.
- IHE may have rules precluding the parties (or advisors) from challenging relevancy decisions during the hearing.
- May only exclude questions based on relevance.
  - Not because they are unduly prejudicial, concern prior bad acts or seek character evidence.
  - Questions may be deemed not relevant when they are duplicative of other evidence already in the record.
  - But, the decisionmaker must exclude (a) medical, etc. records if the party has not consented in writing; and (b) statements when the party/witness is not subject to cross.

## Excluding Statements from Consideration

If a party or witness is not subject to cross-examination, the decisionmaker may not rely on their statement in determining responsibility.

- But, the decisionmaker may not draw any inferences as to responsibility as a result of a party's statement if the party is not subject to cross-examination.

## Hearing Decorum

May have rules that, e.g.,:

- Require advisors be respectful and prohibit abusive/intimidating questioning.
- Limit or prohibit objections to relevancy determinations.
- Govern the timing and length of breaks to confer, and prohibit disruption.
- Require that parties make openings and closings if any, and set time limits.

## Standard of Evidence

May use *in se*      *in rem*

## Hearing Outcome/ Written Determination (cont.)

The determination becomes final on the date the IHE provides the parties with the written determination of the appeal, if any, or the date on which an appeal would no longer be timely, if there is no appeal.

§106.45(b)(7)



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## Note

The content of this presentation is to provide news and information on legal issues and all content is provided for informational purposes only and should not





## Dissemination of Policy §106.8

• Title IX Coordinator(s) contact info:

- Name IX      Name OfiaetAddr0 Td [(ess.)-8.8 (t)]TJ /C2\_1 1 Tf5Tc 3.027 0 Td <0003>Tj /TT3 1 f -0.-Td 1424 217 4 0.69Email,Td (Name)Tj /C2\_1 1 Tf40 Tc 1.779 0 Td <0003>Tj /TT3 1 330003>T21 Tc 0.6(T





Policy



## Grievance Process Formal Complaints

- Hearings
  - Venue: Same or Separate Rooms
  - Decorum





## Training

### Investigators:

Training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

## Training:

- Must not rely on sex stereotypes
- Must promote impartial investigations and adjudications
- Must be maintained for 7 years.
- Must be posted on website, if any, or Available for members of the public to inspect.
- All Up to Date Training Materials



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