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#twitterhashtag

Setting the Stage
WELCOME & INTRODUCTIONS

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Our Hopes...

What this workshop is:

1. Unpack legal requirements
2. Identify what needs to change in your policy
3. Networking/discussion with colleagues/expert faculty

What this workshop is **not**:

1. Not legal advice
2. Not a “how to” operationalize roles - focus is on integrating mandates into policy
3. Not a “one-size-fits-all” given institutional context


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Agenda:

1. Review Expanded Duties for the Title IX Coordinator's Role
2. Review Considerations w/participants
**download worksheet and fact pattern handout*
3. Q & A


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CHAT

What do you need to fully engage in this online experience?


CONNECTING YOUR MICROPHONE

To connect your microphone, identify the Microphone Icon at the top of the screen and click on the drop-down menu. Once you connected, the icon should turn green. Please keep your mic muted at all times, unless you are speaking.



RAISING YOUR HAND AND PROVIDING FEEDBACK TO THE SPEAKER

If at any time during the event you'd like to say something using your mic, please raise your hand and the speaker will call on you. To raise your hand, identify the icon at the top of the screen that looks like someone raising their hand. You can click on this same icon to lower your hand.



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Review of the Title IX Coordinator Role

Cara Hardin, J.D.
Title IX Deputy Coordinator | Marquette University

Thursday, June 4, 2020
1:00 - 2:30 PM - Eastern


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Title IX Coordinator - Role and “IX” Duties

§ 106.8(a) of the final regulations requires schools to designate and authorize at least one employee to serve as Title IX Coordinator and coordinate the recipient’s efforts to comply with the final regulations.

TITLE IX

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I. Notifying applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the school (§106.8):

- The name and contact information of the Title IX Coordinator. § 106.8(a)
- That any person may report sex discrimination/harassment, to the Title IX Coordinator in person, by mail, email or by any other method at any time. § 106.8(a)

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I. Notifying applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the school (§ 106.8):

- That the school does not discriminate on the basis of sex within its programs and activities, including within admissions and employment, and that the school is required by Title IX not to discriminate in such a manner. § 106.8(b)
- That questions about the application of Title IX and the Final Regulations may be referred to the Title IX Coordinator, to the Assistant Secretary, or both. § 106.8(b)



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I. Notifying applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the school (§ 106.8):

- Provide notice of the school’s grievance procedures and grievance process, including (§ 106.8(c)):
 - How to report or file a complaint of sex discrimination,
 - How to report or file a formal complaint of sexual harassment, and
 - How the recipient will respond.



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POLL

What methods does your institution currently provide to report sexual harassment complaints?

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ACTIVITY

Duty I Considerations:

1. What page # or section in your current or future policy is this duty best outlined?
2. Are there methods for complainants to report sexual harassment other than by phone, email, or in-person at your institution? Are they easy to navigate and understand? Will you allow anonymous reporting? How will your institution accommodate the report at “any time” requirement?
3. Who will you work with at your institution to ensure this information gets on the handbooks, catalogs, employee recruitment materials, website, collective bargaining and other professional agreements, etc.?

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II. Ensure trainings provided to Title IX team are published on Title IX website. § 106.45 (b)(10)(D)

Schools must publish training materials that are up to date and reflect the latest training provided to Title IX personnel (and keep for 7 years).

Title IX personnel include the Title IX Coordinator, any investigator, any decision-maker, and any person who facilitates an informal resolution (such as mediation).

OCR: <https://www2.ed.gov/about/offices/list/ocr/blog/20200518.html>

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III. Responding to reports and complaints of sexual harassment

“Actual knowledge” of sexual harassment triggers the duty for the school (Title IX Coordinator) to respond. § 106.30(a)



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III. Responding to reports of sexual harassment

- Informing complainants of the availability of supportive measures and of the process for filing a formal complaint (and if formal complaint filed, follow grievance process in § 106.45). § 106.44(a), (b).
- Working with respondents to provide supportive measures as appropriate.
- Determining whether an emergency removal of a respondent is necessary and if so, allow the student respondent to challenge the decision. § 106.44(c)

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CHAT

Q1: Who will be your designated “officials with authority”?

Q2: Will you continue to make all employees (without legal privilege) mandatory reporters/responsible employees? Why or why not?

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ACTIVITY

Duty II & III Considerations:

1. What page # or section in your current policy are these duties outlined?
2. How will you adhere to the requirement that you post all trainings of Title IX staff on your website? What if the trainings are proprietary or protected by copyright?
**Academic Impression's policy will be shared.*
3. Who will be your designated "officials with authority?" Will you continue to make all employees (without legal privilege) mandatory reporters/responsible employees?

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IV. Accepts or Files Formal Complaints



- Adheres to the complainant's wishes on whether to file a formal complaint when possible.
- Files a formal complaint when not "clearly unreasonable" despite complainant's wishes.
- Files supplemental or amended complaints
- Determines whether consolidation of formal complaints should occur

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ACTIVITY

Duty IV Considerations:

1. What page # or section in your current or future policy is this duty outlined?
2. How will your policy explain the requirements for filing a formal complaint? Will you provide a template for the complainant to complete and sign? How much detail does the complainant need to provide within the “formal complaint” to constitute a formal complaint?
3. How will your policy address the Title IX Coordinator’s authority to disregard a complainant’s wishes not to file a formal complaint and file anyway?
4. When a Title IX Coordinator signs the formal complaint, what will this mean for the role of the Title IX Coordinator and for the complainant and how will this be communicated within your policy?

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V. Coordinates Informal Resolutions § 106.45(b)((9)



Mediation



Restorative Justice



***Not permissible when an employee is the respondent and the complainant is a student.*

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ACTIVITY

Duty V Considerations:

1. What page # or section in your current or future policy is this duty outlined?
2. Will you offer informal resolution as part of the grievance process? Will the Title IX Coordinator have discretion whether to grant a request by the parties for informal resolution? How to explain this in the policy?
3. What type of informal resolutions will you offer and who will facilitate them?

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VI. Rules on Dismissals of Formal Complaints

Discretionary causes for dismissal (§ 106.45(b)(3)(ii)):

- A complainant requests it at any time during the grievance process,
- When respondent no longer enrolled, or
- If evidence can't be obtained to make a determination.

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VI. Rules on Dismissals of Formal Complaints

Mandatory Causes for Dismissal (§ 106.45(b)(3)(i)):

- Sexual harassment allegations, if proven true, do not meet definition of sexual harassment under the Final Regulations.
- The misconduct occurred outside the university's programs or activities or outside the United States.
- The respondent is outside the United States.
- The complainant is not participating or attempting to participate in the school's education program or activity at the time the formal complaint is filed. § 106.30

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ACTIVITY

Duty VI Considerations:

1. What page # or section in your current or future policy is this duty outlined?
2. How will your Title IX Coordinator/policy address requests for dismissals from a complainant? **(Refer to Fact Pattern)**
3. How will your Title IX Coordinator/policy address requests to dismiss a formal complaint upon the withdrawal of a respondent? Will your institution automatically dismiss upon a respondent's withdrawal? Why or why not? If you continue the process even after withdrawal, how will your policy address the grievance process moving forward? **(Refer to Fact Pattern)**

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ACTIVITY

Duty VI Considerations Continued:

4. If the Title IX Coordinator dismisses for the purposes of Title IX, where will you direct the complainant to seek resolution if not within the Title IX office? How will you memorialize in your policy the divergence between Title IX-sexual harassment and non-Title IX sexual harassment?
(Refer to Fact Pattern)
5. Consider having the Title IX personnel take discretionary jurisdiction over non-Title IX sexual harassment. How is this effectuated within your policy and/or Title IX Office? What are the pros and cons of doing so?
6. If discretionary jurisdiction is taken, will you have one sexual harassment policy with two separate tracks (Title IX and general sexual harassment) or two separate policies governing the same sexual misconduct (Title IX and non-Title IX)? Will the Title IX and non-Title IX offenses be subject to the same grievance process? What happens when a case falls under both tracks?

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VII. Oversees Grievance Process



Appoints investigator(s) and makes sure no bias or conflict of interest.
§ 106.45(b)(1)(iii)



Appoints decision-maker(s) and makes sure no bias or conflict of interest.
§ 106.45(b)(1)(iii)



Appoints advisors for the parties, if they don't have one. § 106.45(b)(6)(i)



Ensure parties are treated equitably under the grievance process. § 106.8

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VII. Oversees Grievance Process



Coordinates and monitors hearing process.



Appoints appeals officer and coordinates appeals.



If a finding of responsibility, coordinates the implementation of both supportive measures (to one or both parties) and remedies (to a complainant).

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ACTIVITY

Duty VII Considerations:

1. What page # or section in your current or future policy are these duties outlined?
2. Where will you find your investigators, hearing officers, advisors and appeal officers?
3. How will you ensure there is no bias or conflict of interest with your investigators, decision-makers and appeals officers?

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VIII. Record Keeper

The school must maintain records for at least 7 years.
§ 106.45(b)(10)



- Determination regarding responsibility
- Audio or audiovisual recording or transcript of the grievance process.
- Disciplinary sanctions imposed on the respondent
- Remedies granted to the complainant
- Appeal and decision on appeal
- Any informal resolution and result thereof
- Supportive measures (or why not delivered)
- Documentation that response not deliberately indifferent and that school has taken measures to restore or preserve equal access to programs and activities.

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POLL

What record-keeping software is your institution currently using or thinking about using for this purpose?

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ACTIVITY

Duty VIII Considerations:

1. What page # or section in your current or future policy is this duty outlined?
2. What record-keeping software is your institution currently using or thinking about using for this purpose?
3. What other “records” should you consider keeping in line with this mandate?
4. How will you save audio recordings?

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IX. Ensures compliance with other related guidance on sex-based misconduct

Creates and oversees policy relating to pregnant and parenting students (June 25, 2013 DCL)

Monitors equity within athletics (DCLs: Apr. 2010, Sept. 2008, Mar. 2008, June 2007, Mar. 2005, July 2003, July 1998, Jan. 1996, Dec. 19709, 1975.)

Ensure non-sex-discriminatory hiring practices

Consultant in the creation or continuation of female-only school programs (34 CFR 106.34, 34 CFR 106.3 and May 3, 2002 DCL)

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ACTIVITY

Duty IX: Considerations:

1. What page # or section in your current or future policy is this duty outlined?
2. What is your current policy for your pregnant and parenting students and does that policy or reference thereto belong in your revised Title IX policy?
3. How do you address sex discrimination and gender equity within the revised policy? Do you process those complaints under the § 106.45 grievance process or a different process?

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QUESTIONS

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RESOURCE

Office for Civil Rights

<https://www2.ed.gov/about/offices/list/ocr/newsroom.html>

- [Title IX Regulations Addressing Sexual Harassment](#) (unofficial copy)
- [Title IX Regulations Addressing Sexual Harassment](#) (Federal Register)
- [Title IX: Fact Sheet: Final Title IX Regulations](#)
- [Title IX: U.S. Department of Education Title IX Final Rule Overview](#)
- [Title IX: Summary of Major Provisions of the Department of Education's Title IX Final Rule](#)
- [OCR Blog](#)



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EVALUATION

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