What's Our Syllabus?

- Complexity of Legal Environment on Campus
- Current and Future Title IX Focus
- Dear Colleague Letter and Sexual Assault
- Your Responsibilities
The Laws that Shape Employment and Faculty/Student Relationships in Public Higher Education

- Title VII of the Civil Rights Act
- Civil Rights Act of 1866
- Equal Pay Act

The Laws that Shape Employment and Faculty/Student Relationships

- Age Discrimination in Employment Act
- Family and Medical Leave Act
- Americans with Disabilities Act
- Immigration Reform and Control Act

The Laws that Shape Employment and Faculty/Student Relationships

- Section 504 of the Rehabilitation Act
- Wage and Hour Laws
- Civil Rights Act of 1991
- Title VI
The Laws that Shape Employment and Faculty/Student Relationships
- Title IX
- Clery Act
- FERPA
- US Constitution
- Georgia common law (contract, defamation)

What is Title IX?

What Does Title IX Prohibit?
- Sex discrimination in all university programs
- Sex discrimination in university employment
- Retaliation for protesting conduct that violates Title IX
Title IX and Campus Accountability
August 6, 2012

Who Does Title IX Protect?
"Any person..."
Male and female students
Male and female faculty members
Male and female employees
Third Parties?

It's Not Because You're a Boy; it's Because You're Not a Girl

No, no, no! Of course it's not because you're a boy!

You just... don't have the thighs for a mini skirt...

Unintended, Underrepresented Beneficiary of Title IX?
Pre-Title IX

We can thank Title IX for replacing this, with...

Post-Title IX

...this.

What Else Does Title IX Prohibit?

Sex Discrimination
Sexual Harassment
Sexual Assault

rape
Sexual Harassment

"Sexual harassment is unwelcome conduct of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. Thus, sexual harassment prohibited by Title IX can include conduct such as touching of a sexual nature; making sexual comments, jokes, or gestures; writing graffiti or displaying or distributing sexually explicit drawings, pictures, or written materials; calling students sexually charged names; spreading sexual rumors; rating students on sexual activity or performance; or circulating, showing or creating e-mails or Web sites of a sexual nature."

- US Department of Education Office for Civil Rights

Sexual Harassment Includes Sexual Violence

Physical sexual acts perpetrated against a person's will, or when a person is incapable of consenting due to alcohol or drug use, including rape, sexual assault, sexual battery, and sexual coercion.

- US Department of Education Office for Civil Rights

How is Title IX Enforced

- Statute
- Department of Education Regulations
- Policy Interpretations
- Dear Colleague Letters
- Office for Civil Rights
- Penalties/coercion
Title IX and Campus Accountability
August 6, 2012

Title IX Focus

- Enforcing equality, known as proportionality, in athletics
- Evolving standards of liability for universities in individual sexual harassment cases
- Requiring "safest possible environment" by eliminating and punishing sexual assault
- Ending "inequality" in academic disciplines through proportionality

1st Focus: Common Perception of Athletic Equality Issue, Pitting Boy Against Girl

This is the Old Proportionality Debate: Is Title IX or Bloated Football and Basketball Budgets Responsible for Disbanding Other Men's Teams?
Title IX and Campus Accountability
August 6, 2012

Title IX Justice

YOUR ARGUMENTS ARE DUMB AND YOU'RE DUMB!

Result: Play Ball!

2nd Focus: Supremes Give Meaning to Title IX Prohibition of Sexual Harassment

Franklin v. Gwinnett County School Board
Implied a private right of action for money damages for teacher on student harassment under Title IX

Gebser v. Logo Vista Independent School District
If "appropriate person" has knowledge of harassment and acts with deliberate indifference to it, school can be liable

Davis v. Monroe County Board of Education
School can be liable for student on student harassment
Case Study #1: Faculty/Student Harassment
This is Anson Dorrance
Melissa Jennings v. University of North Carolina

Case Study #2: Student/Student Harassment
Meet Tony Cole
Tiffany Williams v. Board of Regents of the University System of Georgia, Michael F. Adams, Vincent J. Dooley, and the University of Georgia Athletic Association

Case Study #3: Coach/3rd Party Harassment
We Are Penn State
"If these allegations of sexual abuse are true then this is a horrible tragedy for those young boys. If it turns out that some people at the school knew of the abuse and did nothing or covered it up, that makes it even worse. Schools and school officials have a legal and a moral responsibility to protect children and young people from violence and abuse."
Arne Duncan
US Secretary of Education
November 2011
Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act

"The Clery Act"
All universities that receive federal financial assistance must:
✓ Make public information about crimes on or near campus
✓ Every October, issue 3-year crime report
✓ Make available to students
✓ Give timely warnings about crimes that affect student or faculty safety
✓ $27,500 penalty per violation

OCR Clery Act Enforcement

Virginia Tech
$55,000 (too long in notifying students and staff of shootings)

Eastern Michigan
$350,000 + $2.5 million settlement (student murder)

Salem International University
$200,000 (5 forcible sex offenses omitted from annual report)

Mount St. Clare College
$15,000 (failed to include 15 crimes in report)

Possible DOE Penn State Penalties

- OCR began Clery Act Investigation in 2011
- Separate Title IX Investigation?
- Death Penalty?
Title IX and Campus Accountability  
August 6, 2012

3rd Focus: Campaign to End Campus Sexual Assault

- 5% of college women reported being raped or sexually assaulted in one year
- 13% of college women reported being stalked in one year
- In college career, 20% of females suffered completed or attempted sexual assault (underreported)
- In college career, 6.1% of males suffered completed or attempted sexual assault
- Alcohol involved in over 50% of sexual assaults
- 3,300 forcible sexual assaults on campus in 2009

VP Biden's Surprise Introduction

"Students across the country deserve the safest possible environment in which to learn. That's why we're taking new steps to help our nation's schools, universities, and colleges end the cycle of sexual violence on campus."

VP Biden says "no means no"/RealityVP

"Look guys... no matter what a girl does, no matter how she's dressed, no matter how much she's had to drink—it's never, never, never okay to touch her without her consent."  
-VP Joe Biden
Biden Preaches Zero Tolerance/Reality

"No circumstance—none, none—holds the abuser harmless because the victim's judgment was impaired," especially on campus where heavy drinking occurs.

VP Joe Biden

VP Biden Reveals America's "Dirty Little Secret"

"Rape is rape is rape, and the sooner universities make that clear, the sooner we'll begin to make progress on campuses."

— VP Joe Biden

Accountabilibuddies
Dear Colleague Letter

U.S. Department of Education
Office for Civil Rights

Title IX and Campus Accountability
August 6, 2012

Today's Goals

Everyone here must know what conduct has to be reported.

Everyone here must know how to report sexual harassment or violence, whether you are a victim, a witness, or have been informed.

Everyone here must know what resources and remedies are available from East Georgia for sexual harassment or violence.

Anyone likely to witness or to receive reports of sexual harassment or violence must be trained on how to report it.

Dear Colleague, your institutional obligations include . . .

The obligation to respond to and to remedy sexual harassment that creates a hostile environment, when you have actual or constructive knowledge.

What's a hostile environment?

Conduct that is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program.

A student doesn't have to be raped more than once to be subject to a hostile environment, but she may have to tolerate more than one catcall.
Dear Colleague, your institutional obligations include . . .

What's constructive knowledge?

This means when you know or reasonably should know of sexual harassment or violence. It is a much lower standard than actual knowledge and deliberate indifference.

---

Dear Colleague, your institutional obligations also include . . .

The obligation to spread the word.

This means to adopt a no harassment/no violence policy and to distribute it widely to students, employees, applicants for admission, and applicants for employment.

---

Dear Colleague, your institutional obligations also include . . .

The obligation to adopt a uniform and comprehensive "grievance procedure" to facilitate prompt and equitable resolution of complaints of sexual harassment and violence.

This includes investigation and adjudication procedures, and equal appeal procedures.

It also requires use of the "preponderance of the evidence" standard in adjudicating responsibility.
Dear Colleague, your institutional obligations also include . . .

The obligation to designate a Title IX Coordinator to oversee all Title IX complaints and to identify any systemic problems or patterns.

Who do we train?
Anyone likely to witness or to receive reports of sexual harassment or violence.

What do we train them to do?
To recognize and immediately report sexual harassment or violence.

To whom are they trained to report harassment?
The Title IX Coordinator, the Deputy Title IX Coordinators, or to someone with the institutional authority to address harassment.

Why do we need to report harassment?
Because you have a legal obligation to report harassment and violence.
Dear Colleague, your institutional obligations also include...

The obligation to provide interim and final remedies, to impose discipline, and to prohibit retaliation for sexual harassment and violence.

Remedies include counseling, academic support, protection, and flexibility in classes and housing. Do not favor the perpetrator!

Discipline according to the policy.

Follow up to ensure no retaliation.

Dear Colleague, your institution is also encouraged to...

Adopt proactive measures to prevent sexual harassment and violence, such as preventive education to students and staff, establishment of victim resources, RA training, training for athletes and coaches, all to identify (1) what is sexual harassment, (2) what process is in place to remedy sexual harassment, and (3) what are the possible consequences on sexually harassing another.

Dear Colleague, when you learn about campus sexual harassment, you must:

- Immediately and appropriately investigate the incident.
- Take prompt and effective steps to end any sexual violence that it discovers, to prevent any recurrence, and to address its effects, regardless of any contemporaneous criminal investigation.
Criticism

More likely than not . . .
While the Dear Colleague letter is a set of instructions, it's also a threat that the government will be watching closely for schools that are anything less than proactive.

The April 4th Directive

What is Sexual Harassment
... unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when...
- Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment or academic study; or
- Submission to or rejection of rude conduct of an individual as a basis of employment or academic decision affecting such individual, or
East Georgia State College Policy Prohibiting Sexual Harassment

Such conduct universally interferes with an individual's work or academic performance, or creates an intimidating, hostile, or offensive working or academic environment.

This Policy Covers Sexual Misconduct and Stalking

East Georgia State College Policy Prohibiting Sexual Harassment

Sexual harassment is a form of unlawful discrimination:
It is the policy of East Georgia College to prohibit sexual harassment and to respond promptly to all complaints of sexual harassment.

Policy protects:
✓ Student Body Members
✓ Faculty & Staff
✓ College Program Participants

East Georgia State College Policy Prohibiting Sexual Harassment

Policy Applies To:
✓ Student Body Members
✓ Faculty & Staff
✓ College Program Participants
East Georgia State College Policy Prohibiting Sexual Harassment

Why is it important?
Faculty and staff have a duty to report incidents of sexual harassment:
✓ Knowledge of incident
✓ Received a Report of Incident

Updated Grievance Procedures

The system in place for reporting, processing, and resolving complaints of sexual harassment and sexual violence.
Process is not compliant, unless:
- Notice is given to all, including how and where to file
- Policy applies to harassment by employees (faculty), students and third parties
- Thorough and impartial investigation, using a preponderance of the evidence standard

Updated Grievance Procedures

Specify designated and reasonably prompt time frame for the process
Notice to complainant and accused of outcome
Prevent recurrence and correct discriminatory effects
Title IX and Campus Accountability
August 6, 2012

4th Focus: Equality Through Proportionality in Academic Programs

"Let's not forget, Title IX just isn't about sports. From addressing inequality in math and science education to preventing sexual assault on campus to fairly funding athletic programs, Title IX ensures equality for our young people in every aspect of their education."

- President Barack Obama

Reality and Perception

"...more women as a whole now graduate from college than men. This is a great accomplishment—not just for one sport or one college or even just for women but for America. And that is what Title IX is all about."

President Barack Obama

The Next Focus of Title IX

"Title IX has opened the doors for women to pursue many fields, but in STEM women remain underrepresented in classes and fields that are pathways to high wage careers."

-National Women's Law Center
Proportionality in STEM Programs

STEM FIELDS
Science—Technology-Engineering-Mathematics

Quotas Won't Ensure Success; Alternatives to a Failed STEM Career

To heck with this. I'll be a stripper.

Write 500 Times
I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws. I will be good and not violate any laws.
Thank you

Presented by:
Burton P. Dodd
Phone: (404) 240-8226
Email: bdodd@laborlawyers.com