Title IX Coordinator Training

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What’s Our Syllabus?

The Dear Colleague Letter

• The Title IX Coordinator
• Notice of nondiscrimination
• Grievance policy
• Investigation and trial
• Importance of training
Dear Colleague Letter

U.S. Department of Education
Office for Civil Rights

Dear Colleague Letter: Sexual Violence
Background, Summary, and Fast Facts
April 4, 2011

Sexual Violence Statistics and Effects

- Acts of sexual violence are vastly under-reported. Yet, data show that our nation’s young students suffer from acts of sexual violence early and the likelihood that they will be assaulted by the time they graduate is significant. For example:
  - Recent data shows nearly 4,000 reported incidents of sexual battery and over 800 reported rapes and attempted rapes occurring in our nation’s public high schools. Indeed, by the time girls graduate from high school, more than one in ten will have been physically forced to have sexual intercourse in or out of school.
  - When young women get to college, nearly 20% of them will be victims of attempted or actual sexual assault, as will about 6% of undergraduate men.
  - Victims of sexual assault are more likely to suffer academically and from depression, post-traumatic stress disorder, to abuse alcohol and drugs, and to contemplate suicide.

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What does the letter cover?

• Designation and responsibilities of a campus Title IX coordinator

• Revisions to and distribution of an institution’s nondiscrimination notice

• Revisions to and distribution of grievance and investigation procedures
What does the letter cover?

- Standards for disciplinary hearings
- Interaction with law enforcement in cases of sexual assault
- Training of employees, faculty, students, campus law enforcement officers, RAs, investigators, and members of disciplinary panels
Compliance Incentives

Direct mechanisms

- Cut off federal funding
- Compliance reviews
- Agreement to comply

Indirect mechanisms

- Taint defense of subsequent lawsuit
First Step for Compliance with Dear Colleague Letter: Title IX Coordinator

What is the Title IX Coordinator?

Historically, someone in Athletics Department, by default

Now, of importance to entire campus
Formalize title for first time
First Step for Compliance with Dear Colleague Letter: Title IX Coordinator

Primary Responsibilities

Holder of all Title IX knowledge must know all policies and procedures.
First Step for Compliance with Dear Colleague Letter: Title IX Coordinator

Who is It?
No guidance who should serve, other than who shouldn’t serve – no conflict of interest

Example: Senior HR, diversity, or EEO official
First Step for Compliance with Dear Colleague Letter: Title IX Coordinator

May there be more than one?

Must have a single Title IX Coordinator with oversight responsibility

Deputize other coordinators to report to the Title IX Coordinator
First Step for Compliance with Dear Colleague Letter: Title IX Coordinator

Areas of responsibility
Athletics, student life, human resources

Origins of complaints
Students, faculty, staff
Conflicts of Interest

Title IX coordinator cannot have other job responsibilities that may create a conflict of interest.

OCR states that disciplinary board hearing members and an institution’s general counsel are conflicted.

Appeals board members also conflicted
First Step for Compliance with Dear Colleague Letter: Title IX Coordinator

Responsibilities

Personally investigate or oversee the investigation of alleged acts of sexual assault or harassment

Review all complaints received to identify and address any patterns or systemic problems
First Step for Compliance with Dear Colleague Letter: Title IX Coordinator

Responsibilities

Meet with students who believe sexual harassment or assault has occurred

Ensure that complaints are handled through consistent practices and standards
First Step for Compliance with Dear Colleague Letter: Title IX Coordinator

Spread the Word

Distribute name, title, office address, telephone number, and email address of title IX Coordinator.

Nondiscrimination policies.

Faculty, staff, and student handbooks; grievance procedures; and posters throughout campus.
Nondiscrimination Policy
Must be easy to find, easy to understand
Website, intranet
Cross-referenced, linked
Second Step for Compliance with Dear Colleague Letter: Nondiscrimination Policy

Nondiscrimination Policy Contents

East Georgia does not discriminate on the basis of sex in its education programs.

Sexual harassment and sexual violence are kinds of sexual discrimination.

Use of definitions and examples of sexual harassment and sexual violence.
Second Step for Compliance with Dear Colleague Letter: Nondiscrimination Policy

Nondiscrimination Policy Contents

Protects students, faculty, staff, and visitors

Applies on-campus and off-campus

Identifies Title IX Coordinator and Deputies
Nondiscrimination Policy Contents

Sets out responsibilities of Title IX Coordinator

Alternates if case handler is also the alleged perpetrator
Third Step for Compliance with Dear Colleague Letter: Grievance Policy

GRIEVANCE POLICY CONTENTS

Prepared in age-appropriate language

Applied to complaints filed by students against employers, other students, or third parties

Tell students where to go and who to see if they have been harassed or suffered sexual violence

Campus police to contact

Title IX Coordinator
Third Step for Compliance with Dear Colleague Letter: Grievance Policy

Grievance Policy Contents

Tell how to file a complaint

Authorize fair and impartial investigations of complaints
  - Present witnesses
  - Present evidence
Grievance Policy Contents

Provide counseling and victim services, informal, and off-campus

Prohibit retaliation

Prevent recurrence, correct effects, and tell victims of preventive and corrective steps
Grievance Policy Contents

Complete investigation promptly, notify both parties of outcome, and specify time for appeal by either party.
As a practical matter…

60 days is a reasonable timeframe to resolve complaints
- but the sooner the better
- allow extra time for fairness
Notice to All

A grievance procedure is ineffective unless

- students know about it
- students know how it operates
- students know how to file a complaint
Notice to All

Post on website, have available at multiple locations, and summarize in handbooks, codes of conduct, and catalogs
Third Step for Compliance with Dear Colleague Letter: Grievance Policy

Notice to All

Policies on harassment, discrimination, and sexual misconduct and grievance policy must be distributed electronically to everyone on campus including students, faculty, and staff.

To applicants for admission and to applicants for employment
Third Step for Compliance with Dear Colleague Letter: Grievance Policy

- Set out in procedures in writing and spread widely
- State that evidentiary standard is “preponderance of the evidence” for sexual harassment and sexual assault claims
  - “more likely than not”
  - Significant change in past practice
Fourth Step for Compliance with Dear Colleague Letter: Investigation and Trial

Requirements for Decision-Makers

• Training/experience in handling sexual assault and harassment cases
• Training/experience in confidentiality obligations
• Understand Title IX grievance procedure
• Disclose any conflict of interests
Fourth Step for Compliance with Dear Colleague Letter: Investigation and Trial

Responding to Complaints

Respond promptly?
Meet with the complaining student
Explain:
- the investigation, trial, and appeal process, including fair treatment for all
- the institution’s policies
- the availability of counseling
- the availability of accommodations
- the prohibition of retaliation
Responding to Complaints

Sexual Assault Cases

Explain:
- the availability of medical attention
- the right to file a criminal complaint
- the institution’s obligation to report crime to the police
Fourth Step for Compliance with Dear Colleague Letter: Investigation and Trial

**Duty to Investigate**

Must investigate even if complaining student says no

If complaining student wants anonymity, explain
  - ban on retaliation
  - limitation on institution’s ability to investigate
  - discretion and need-to-know disclosures
  - consider whether the danger to others outweighs request for anonymity

**Protect the complaining student**

- “no contact” rule
- academic separation, favoring the complaining student
- housing separation, favoring the complaining student
Fourth Step for Compliance with Dear Colleague Letter: Investigation and Trial

Conducting the Investigation

Immediate investigation of complaint
No delay for parallel criminal cases
Impartiality and no prejudgment
Equal ability to submit evidence and witnesses
Equal right to evidence and witness statements
Stress confidentiality and no retaliation
Fourth Step for Compliance with Dear Colleague Letter: Investigation and Trial

**Investigation Methodology**

- Who do you tell?
- Who will investigate?
- Make a plan
- What material is relevant to the investigation?
- Who and where to interview?
- Strategies
- Interview format

**Accuser**
**Accused**
**Witnesses**

- Interim relief
- Document the investigation
- Make a report, not a judgment
Fourth Step for Compliance with Dear Colleague Letter: Investigation and Trial

Consider:

- Severity of conduct alleged/is danger to others posed?
- Prior complaints
- Relative ages of parties
- Is alcohol involved? Drugs?
  - can negate any consent
  - never at fault
Fourth Step for Compliance with Dear Colleague Letter: Investigation and Trial

• Make credibility assessments
• Document investigation
  - OCR might want to see it
  - a prosecutor or defense lawyer might want to see it
  - a civil rights lawyer may want to see it
• Notify both parties of outcome
Fourth Step for Compliance with Dear Colleague Letter: Investigation and Trial

**Make the Record, Minimize Risk**

Quasi-judicial process with high stakes

OCR is concerned with process
The institution should be concerned with risk

OCR doesn’t care what happens after the grievance and disciplinary process is over

If your institution is sued for doing exactly what OCR told you to do, you’re on your own
Fourth Step for Compliance with Dear Colleague Letter: Investigation and Trial

**Ensure Fairness**

Be equally fair to both sides, and document your fairness

- Document uncontroverted facts
- Document the basis for credibility determinations
- Document the reason for a decision
- Document the reason for rejecting a claim or a defense

To show a procedural process in conformity with your own policies

To show a reasonable and fair basis for the decision

If you do this, a judge will likely side with you

A party who feels unfairly treated is more likely to file a lawsuit than a party who feels like he was treated fairly, regardless of responsibility
Fourth Step for Compliance with Dear Colleague Letter: Investigation and Trial

Remedies: Obligation to End the Violence, Prevent its Recurrence, and Remedy its Effects

Punishment and discipline of offender

Protection of complainant
- Interim and final
- Counseling
- Academic support
- Options to avoid contact with offender

Prohibit retaliation
- Proactive monitoring to ensure
As a practical matter…

Mediation not permitted in sexual assault cases

Mediation allowed in sexual harassment cases as alternative, with oversight

Do not require to complainant to “work it out” directly with the accused
Fifth Step for Compliance with Dear Colleague Letter: Training and Knowledge

Broad Obligation

– Employees
– Campus Safety Officers
– Grievance Process Individuals
– Students
Fifth Step for Compliance with Dear Colleague Letter: Training and Knowledge

**Campus Security**

- Know the grievance and other investigative procedures
- Know the Title IX policy
- Notify complaining person to file a Title IX complaint with the institution
- Report incident to Title IX Coordinator
- Coordinate investigation with Title IX Coordinator
- Give Title IX Coordinator access to investigation notes and findings
Fifth Step for Compliance with Dear Colleague Letter: Training and Knowledge

**Athletic Department**

OCR is especially distrustful of athletic departments, coaches, and players.

- Complaints must be handled outside of the athletic department

**Coordinators, investigators, adjudicators, and appeals referees**

OCR says training or experience a must

- in sexual violence
- in the grievance procedure
- in concepts of confidentiality
- in impartiality (no conflicts)
Fifth Step for Compliance with Dear Colleague Letter: Training and Knowledge

Coordinators, investigators, adjudicators, and appeals referees

More Important-training

- in investigation techniques (basic w,w,w,w,h)
- in credibility determinations
- in measuring and weighing evidence
- in the exercise of discretion
- in the risk inherent in this process
Fifth Step for Compliance with Dear Colleague Letter: Training and Knowledge

OCR’s Recommended Preventive, Proactive Measures

Educational programs

- What is sexual harassment?
- What are our policies about sexual harassment?
- What are the consequences of violating our policies?
- Encourage reporting sexual harassment.

Victim resources
Orientation programs for new students and employees
RA training programs
Athletes and coaches
Fifth Step for Compliance with Dear Colleague Letter: Training and Knowledge

**Principles to Minimize Risk**

- Investigate promptly and avoid roadblocks
- Map out security, police and disciplinary responses
- Begin documenting the initial meeting
- Investigate; do not judge
- Provide handlers
- Allow lawyers, maybe
- Be fair with evidence
- Keep sexual assault cases separate
- Allow adequate preparation time
- Involve parents
- Advise students on alcohol/violence correlation
- Involve the team
- PR response
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
East Georgia State College Policy Prohibiting Sexual Harassment

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
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
Thank You

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