

TIX COORDINATOR TRAINING: ROADMAP FOR COMPLIANCE

**July 31, 2020 Virtual Training
Session 2
presented by
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TIXC:ROADMAP FOR COMPLIANCE

- Comprehensive Understanding of 2020 Regulations and Compliance Goals
- Educate Supervisors on 2020 Regulations and Effective Date August 14, 2020
- Determine Staffing Needs and Finalize Title IX Team
- Revise/Draft , Approve, and Implement Compliant Policies and Procedures
- Identify and Convene Stake Holders
- Train Title IX Team Comprehensively
- Create Schedule for student, parent/guardian, and employee training

2020 OCR Compliance Goals and Priorities

- Title IX Policies and Procedures DO NOT RESTRICT said rights:
 - First Amendment
 - Due Process Clauses of 5th and 14th Amendments
 - Fourth Amendment
- 2020 Regs trump any conflicting FERPA regs
- Parents/Guardians possess the right to file a formal complaint on behalf of a complainant (child)
- Title IX preempts any conflict with state law, to the extent of the conflict

TIXC: NOTICE REQUIREMENTS

- Recipient MUST designate a “Title IX Coordinator” because enhanced duties assigned by 2020 regulations, important to not allow Coordinator positions to remain unfilled.
- Recipient MUST notify applicants for admission and employment, students, parents/legal guardians, employees, and all unions holding CBAs with recipient of the following regarding the Title IX Coordinator:
 - name and title;
 - office address;
 - electronic mail address; and
 - telephone number
- MUST prominently display Title IX contact information on website and pertinent student and employee handbooks
- Recipient MUST also provide contact information of ED’s OCR.

TIXC: RESPONSIBILITIES

- Recipient designates Title IX Compliance authority.
- TIXC MUST be (1) independent and able to avoid conflicts of interest, (2) report to senior leadership, and (3) hold authority to effectively coordinate compliance efforts and responsibilities under Title IX for all students, employees, and others in the school/district community.
- TIXC needs to be free from improper influence, therefore, outside hierarchical organizational structure (senior leadership, Board, legal counsel)

TIXC: RESPONSIBILITIES

- TIXC report to senior leadership should , (1) communicate importance of organizational support of the position to other members of school/district and surrounding community, (2) ensure senior leadership informed of any significant Title IX issues, (3) inform senior leadership that he/she provides direct access of Title IX resources to other senior leaders who need to implement Title IX policies and procedures, supportive measures, remedies, and/or corrective measures.
- TIXC MUST possess authority to coordinate and implement all aspects of Title IX compliance and related policies.

TIXC: RESPONSIBILITIES

- Focus on system wide policies, processes and procedures that meet Title IX requirements
- Create prevention programs: students and employees
- Develop procedure and process for assessing school climate and program effectiveness (annual or biannual review)
- Ensure Title IX Team possesses appropriate and necessary knowledge, skills, training, and resources to fulfill their responsibilities. (ongoing training and performance evaluations for Deputies, Investigators, Decision-Makers, Appeal Decision-Makers, Advisors, and Advocates)

TIXC: RESPONSIBILITIES

- Provide supervision to Deputy Title IXs and Investigators: Includes strategizing investigation, appointing investigators, advisors, etc.
- Coordinate regular revision and review of Title IX policy and procedures.
- Develop assessment schedule to review compliance efforts.
- Conduct initial assessment for all reported incidents (this can be delegated to deputies).
- Track systemic or pattern of incidents and take remedial actions to prevent recurrence. (30 Foot View)

TIXC: RESPONSIBILITIES

- Provide annual report to school/district community including statistics, education and prevention efforts, and continuing practices.
- Regular updates to Superintendent, School Board, etc.
- Responsible for maintaining complete records of all sex and gender-based discrimination, misconduct, and retaliation reports and the school/district's response. (Records maintained at least 7 years)
- Oversee communication protocols with information shared with parties/witnesses/advisors and other participants in resolution process.

TIXC: RESPONSIBILITIES

- Facilitate regular conversations with legal counsel when appropriate.
- Create Model NOIA and NOI Forms and a Model Investigation Report.
- Establish Memoranda of Understanding (MOU) for information sharing with SRO, local law enforcement, local educational agencies, community-based response agencies (e.g. child protective services, rape crisis centers, victim advocates, medical services, mental health providers).
- Integrate abuse of minors protection programming/training/duties to align with Title IX programs.

TIXC: RESPONSIBILITIES

- Develop and maintain accurate web and print publications regarding non-discrimination statements, policy, process, and resources for students, parents/guardians, employees, third parties, witnesses, reporting/responding parties, advisors, advocates.
- Recruit and train school-based advisors for reporting and responding parties.
- Train all employees on reporting requirements and the policies and procedures of Title IX. (supplemental contract employees i.e. coaches)

TIX: RESPONSIBILITIES

- Training for all students and parents/guardians.
- Ensure compliance with Title IX duties to STOP, PREVENT (Recurrence), and REMEDY known sex discrimination and retaliation.
- Assure all Deputy Coordinators, Investigators, Decision-Makers and any person who facilitates an informal resolution process receives training consistent with the extensive and specific requirements of §106.45(b)(1)(iii).

TIXC Duties: Grievance Process

- Provide to persons entitled to notification of the recipient'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 recipient will respond.
- Title IX report can be made, in person, by mail, by telephone, or by electronic mail, using TIXC contact information or by any other means that results in TIXC receiving the person's verbal or written report.

TIX Duties: Grievance Process

- If TIXC signs a Formal Complaint, the TIXC is not a complainant or a party and must comply with other regulatory duties.
- 2020 Regulations require a TIXC to document on the basis for the conclusion that the recipient's response was NOT “**deliberately indifferent**”.
- 2020 Regulations require TIXC to document that recipient taken measures to deigned to restore or preserve equal access to recipient's education program or activity.

TIXC Duties: Grievance Process

- If recipient does not provide a Complainant supportive measures, recipient **MUST** document reasons why such a response was “**not clearly unreasonable in light of the known circumstances**”. However, said documentation of certain bases or measures does not limit recipient in the future from providing additional explanations or detailing additional measures taken.

TIXC Duties: Grievance Process

Initial Assessment:

TIXC responsible for coordinating the intake and evaluation of reports alleging sex or gender-based discrimination.

TIXC SHOULD review each report and

(1) Respond to any immediate health and safety concerns raised by the complaint; and **(2)** offer immediate support and assistance (supportive measures both parties); **(3)** determine if law enforcement and/or child protective services is required, and **(4)** assess nature and circumstances of complaint to determine if reported conduct rises to level of potential policy violation and does whether allegation meets §106.30 definitional requirements and/or §106.45 dismissal requirements.

TIXC: Grievance Process

Initial Assessment Cont.:

- (1) TIXC receives a Formal Complaint;
- (2) Analyze whether allegations/report meets §106.30 definition of sexual harassment, no dismiss and recipient free to respond with supportive measures or investigate complaint under a conduct code or some other policy. If yes, determine if any other § 106.45 dismissal procedures apply. If no mandatory or discretionary dismissals applicable, draft NOIA;
- (3) Within NOIA recipients should include all possible applicable policy violations.

INITIAL ASSESSMENT: DECISION FLOW CHART

- Formal Complaint filed? If yes, proceed.
- If not, is recipient on notice? If yes, proceed.
- Should TIXC sign/initiate a formal complaint? If yes, proceed.
- Has TIXC conducted an individualized assessment of immediate physical health or safety threats, and determined whether to invoke emergency removal? Once complete, proceed (regardless of emergency removal outcome)

INITIAL ASSESSMENT: DECISION FLOW CHART

- Does respondent behavior meet § 106.30's definition of sexual harassment, sexual assault, domestic violence, dating violence, or stalking? If no, dismiss.
- Did behavior occur within education program or activity, including locations, events, or circumstances over which recipient exercised substantial control over both respondent and the context in which sexual harassment occurred? If no, dismiss.

INITIAL ASSESSMENT: DECISION FLOW CHART

- Did behavior occur in the United States? If no, dismiss.
- At time of complaint, was Complainant participating in or attempting to participate in education program or activity of recipient with which formal complaint is filed? If no, dismiss.
- With or without dismissal, is this a matter that can/should be referred for informal resolution?

INITIAL ASSESSMENT: DECISION FLOW CHART

- If not subject to mandatory dismissal, do discretionary dismissal grounds apply?
 - Is Respondent no longer enrolled or employed by recipient?
 - Are there specific circumstances that prevent recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations?
 - Complainant notifies TIXC **in writing** that Complainant would like to withdraw formal complaint
 - If yes to one of above, voluntarily dismiss complaint

INITIAL ASSESSMENT: DECISION FLOW CHART

- If formal complaint dismissed, should alternate policy/process be reinstated?
 - If dismissed above, respond to appeals of dismissals, as necessary
- If proceeding under Title IX Grievance Process, assess context/history to determine if potential pattern or threat may exist or if a climate/culture investigation is needed.
- Is there collateral misconduct that can/should be referred elsewhere, in doing so, no intent to interfere with any right or privilege secured by Title IX?

VIOLENCE RISK ASSESSMENT

THREE INSTANCES REQUIRED

1. Individualized assessment prior to emergency removal.
2. Helping TIXC determine if case is appropriate for informal resolution.
3. TIXC decides the recipient needs to proceed formally with complaint despite unwillingness or inability of Complainant to do so.

EMERGENCY REMOVALS

ALLOWED, ONLY IF RECIPIENTS FOLLOW THESE STEPS:

- A.** Individualized safety and risk analysis to determine whether there is an immediate physical threat to the health and safety of students or other individuals arising from the allegation of sexual harassment that would justify removal; and
- B.** Provide Respondent written notice of emergency removal, and
- C.** Provide opportunity for Respondent to challenge decision immediately following notice of removal.

SUPPORTIVE MEASURES

- Temporary individualized services to restore or preserve access while an investigation or resolution process is underway. (Interim Measures)
- Same measures may be imposed after a final resolution as “remedies”
- Supportive measures = no timeline.
- Recipient policies **MUST** describe the available range of supportive measures.
- TIXC (or designee) is responsible for coordinating supportive measures
- Supportive Measures **MUST** be provided confidentially, to the extent they can be, without interfering with recipient’s ability to provide them
- Best practice to provide supportive measures to Respondent, however, not required by Final Rules

SUPPORTIVE MEASURES: TIX DUTIES

TIXC MUST:

- ◆ Promptly contact Complainant to discuss available supportive measures as defined in §106.30;
- ◆ Consider the Complainant's wishes with respect to supportive measures;
- ◆ Inform Complainant of availability of supportive measures with or without filing a formal complaint; and
- ◆ Explain to Complainant the process for filing a Formal Complaint

SUPPORTIVE MEASURES EXAMPLES

- Referral to counseling, medical, and/or other health services
- Referral to Employee Assistance Program
- Education to the community or community subgroup
- Safety planning
- Providing campus security escorts
- Providing transportation accommodations
- Implementing Contact limitations (No Contact Orders)
- Academic support, extension of deadlines, independent study
- Class schedule modifications, withdrawal, etc.
- Increase security and monitoring of certain areas of campus

INFORMAL RESOLUTION

- Informal Resolution follows TIXC initial assessment and is determined to be a viable option through separate consultation with the parties about their desire to resolve complaint informally. (Gate Keeper)
- TIXC determines whether specific facts of allegations make it an appropriate choice for alternative resolution, but cannot compel any party to participate.

INFORMAL RESOLUTION

- ED precludes informal resolution in employee-student cases.
- Informal Resolution may be applicable when Respondent accepts responsibility and sanctions early on, or withdraw/resigns, or recipient determines that remedies only response is equitable, and no formal resolution is required.
- Cases involving sexual violence difficult to resolve informally and not a practical or advisable resolution.

INFORMAL RESOLUTION

Regulations Permit Informal Resolution When:

- Formal Complaint filed
- Informal Process can be used any point prior to reaching a determination of responsibility
- Parties provide voluntary, written consent to use informal process
- Parties provided written notice includes:
 - Reported misconduct/allegations
 - Informal Process R/Q once completed, precludes parties from changing their minds and reverting to formal grievance process;
 - Right of parties to withdraw and resume formal grievance process;
 - Accept any consequences that result from process, including sanctions, records maintained and shared; and
 - Whether the resolution would be binding on the parties.

Grievance Process: Investigation

- TIXC assigns one or more appropriately trained investigators who are free from conflicts of interests or disqualifying bias for or against a party.
- TIXC provides NOIA (or designee-often investigator)
- Investigation reports commonly reviewed by the TIXC for completeness and clarity.

FORMAL INVESTIGATION: Bias and Conflict of Interest

- 2020 Regs require recipients to ensure coordinators, investigators, decision-makers (including appeal decision-makers) do not have conflicts of interest or bias against the parties.
- Recipient grievance process should include language that screens for bias and conflicts of interests and includes a provision for a staff member's self-recusal and a process for objection by the parties to any person playing a role in the grievance process whose bias or conflict of interest can be demonstrated. (Include process in NOIA)
- Appeal process effective tool to insulate a recipient's process from bias allegations.
- Built-in opportunity to review and respond to allegations of bias or conflicts of interests at every level of the process is critical.

“BIAS” DEFINED

- “Bias”: Prejudice in favor or against one thing, person, or group compared with another, usually in a way considered to be unfair. (*Oxford Dictionary*)
- “Bias”: An inclination of temperament or outlook; especially, personal or unreasoned judgment, prejudice. (*Merriam-Webster Dictionary*)
- **Confirmation Bias** – Confirm your idea of case=bias
- **“Like Me” or “Similar to Me” Bias**- Causes people to disproportionately favor individuals who are similar to themselves. (gender, ethnicity, nationality, career history, educational background, etc.)
- Prejudicial action is harmful and in an investigation context, the “harm” is an unfair decision.

“Bias” & Prejudice

- Conscious vs. Unconscious
- Social & Cultural Capital
- Stereotyping
- Cultural competence
- Social Justice
- Multi-Partiality

“Bias” Hot Button Issues

- Sexual Orientation
- Gender, transgender, and gender identity
- Race
- Ethnicity
- Religion
- Political Views
- Athletes
- Drug/Alcohol Use
- Prior Student Conduct Unrelated or No Prior Conduct

Conflict of Interests

- Conflicts of Interests create role confusion and compromise impartiality and objectivity
- Simply knowing a student/employee or previously disciplining party is not typically sufficient to create a conflict of interest
- Types of Conflicts
 - Wearing too many hats
 - Legal Counsel
 - Non-impartial appellate decision-maker(s)

“Bias” in Procedure

- Procedure:
 - Exclusion of evidence
 - Failure to follow procedures
 - Burden of proof on Respondent
- Biased Training Materials
- Insufficient Training
- Bias due to internal/external pressures (politics, lawsuits, identity parties/parents)
- Conflicts of Interest

Prevent “Bias”

- Self-Recusal Process
- Process for Parties to raise bias or conflicts
 - Replace personnel
 - Redo portions of grievance process
- Title IX Coro Oversight
 - Regular Check ins
 - Report Review
 - Strategize with Investigator
 - Insulate against external/internal pressures
- Internal Appeal Function/Ground for Appeal

RECORD KEEPING

- Investigation records **MUST** include NOIA, Notice of Outcomes, Rationales, any determination regarding responsibility, any disciplinary sanctions imposed on Respondent, any supportive measures taken, any remedies provided the parties, and compliance with sanctions assigned.
- **MUST** also maintain records of any appeals and results therefrom, any informal resolutions, and all materials used to train coordinators, investigators, and decision-makers with regard to sexual harassment.
- Basis for any conclusions/decisions, must be documented, as well as, conformation that response was not clearly unreasonable, and school/district taken measures designed to restore or preserve access to educational program or activity.

QUESTIONS

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THANK YOU