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Title IX Regulations Update: *A Look At Policy and Fiscal Aspects*

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2020 Title IX Sexual Harassment Regulations

Impacts to California Community Colleges

Title IX – 1972 Educational Amendments to the Civil Rights Act

- “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”
- Covers: recruitment, admissions, counseling, financial assistance, athletics, **sex-based harassment**, treatment of pregnant and parenting students, discipline, single-sex education, and employment.

2020 Title IX Sexual Harassment Regulations: Themes

- Discrimination on the basis of sex potentially arises from a College's treatment of a complainant **or a respondent** in response to a formal complaint of sexual harassment.
 - Complainant protected by prompt response, supportive measures, and remedies upon finding of harassment
 - Respondent protected by prompt response, and adherence to a grievance process that includes significant due process rights
- Prediction: colleges and parties will be better served by informal resolution and supportive measures than by formal disciplinary processes, which will be better handled by the courts.

Roadmap of Key Changes to Title IX

- Scope
- Jurisdictional Limitations
- Presumptions & Evidence
- Training Requirements
- Obligation to Respond
- Grievance Procedures
- Investigations
- Live hearing with Cross-examination
- Informal Resolution
- Record Retention





Scope



Scope – Definition of Sexual Harassment

- Sexual harassment:
 - **Quid pro quo** harassment: school employee conditions education benefits on participating in unwelcome sexual conduct (ie. Quid pro quo);
 - **Hostile Environment:** severe, pervasive, and objectively offensive conduct that denies equal access to an education program or activity;
 - **Sexual assault:** (as defined in the Clery Act), dating violence, domestic violence, and stalking (as defined in the Violence Against Women Act).

Other Misconduct

- Misconduct falling outside of Title IX's jurisdiction may be addressed by:
 - Codes of Conduct
 - College policies
 - Institutions may adopt separate process
- Approaches to blended cases
- Adherence to Ali decision in cases where credibility is at issue and serious discipline may result

Actual Knowledge

- Duty to respond triggered by “actual knowledge”
 - Actual knowledge occurs only when the Title IX Coordinator, or an official with authority to institute corrective measures, has notice of sexual harassment.
- Not all employees will be required to report sexual harassment to the Title IX Coordinator.
 - Institutions will be able to make determinations on which employees will be required to report, and which employees may be confidential resources.



Title IX Jurisdiction



Jurisdiction: Educational “Program or Activity”

- Title IX covers conduct that occurred within an educational “program or activity”
 - College exercised “substantial control”
 - Includes building owned or controlled by a recognized student organization

Jurisdictional Issues- Within the United States

- Title IX applies only to sexual harassment against persons within the United States.
 - Title IX would not apply to any conduct that occurred outside of the United States, such as during study abroad.



Standards of Evidence



Presumption & Evidence

- College must maintain presumption that respondent is not culpable until determined otherwise
- College grievance process may apply either the “preponderance of evidence” or the “clear and convincing evidence” standard
- The same standard must apply to formal complaints against both students and employees (including faculty).



Personnel and Training Requirements



Title IX Coordinator

- At least one “Title IX Coordinator” required.
 - Notice to all applicants, students, employees, unions & on website.



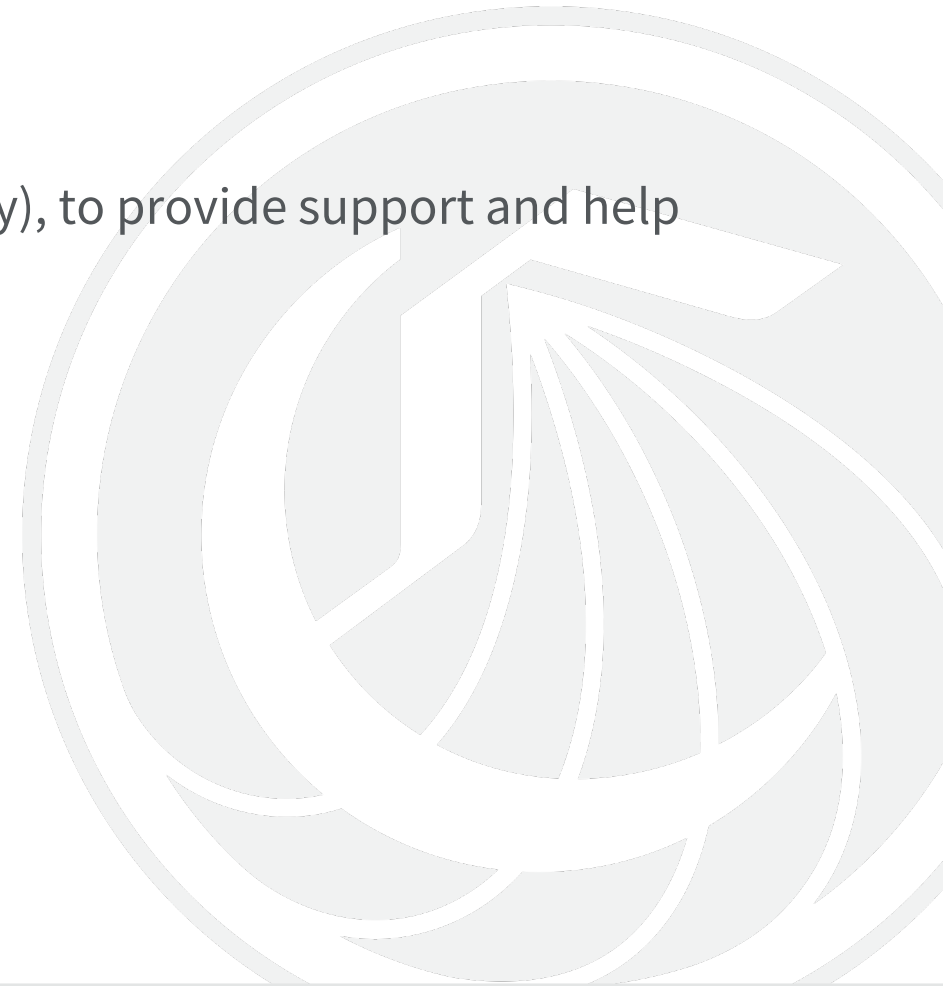
Investigator

- Investigator function is separate:
 - Must be objective
 - May NOT act as the decision maker in determining responsibility.



Advisor

- Each party has the right to an advisor (who may be an attorney), to provide support and help navigate the grievance process.
- College must provide an advisor.
- Advisor must conduct cross-examinations during live hearing.

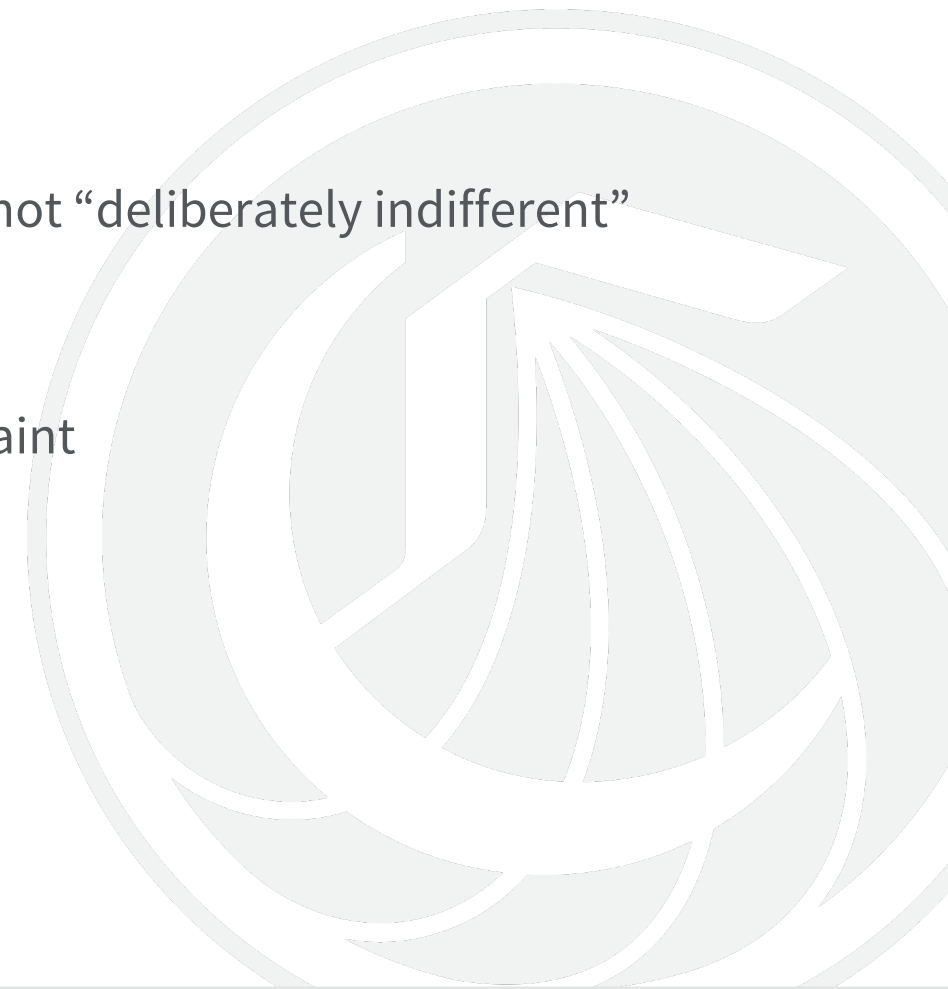


Required Training

- Title IX Coordinator, investigators, decision-makers, and those involved in any informal resolution process must receive training on topics including:
 - the definition of harassment under Title IX,
 - the scope of an education “program or activity,”
 - how to conduct an investigation and grievance process,
 - Impartiality
 - Live hearing technology,
 - Relevance of evidence and hearing questions
 - Investigative report writing containing a summary of the evidence.
- All training material must be posted on the institution’s website.

Obligation to Respond

- Colleges must respond to Title IX harassment in a way that is not “deliberately indifferent”
- This response must include
 - Providing supportive measures to both parties
 - Informing the complainant on how to file a formal complaint
 - Following a grievance process that complies with Title IX
 - Investigating any formal complaint of sexual harassment
 - Dismissing complaints not allowed under Title IX



Supportive Measures

- Non-disciplinary, non-punitive individualized services
 - Without fee or charge to the complainant or the respondent
 - Before or after the filing of a formal complaint or where no formal complaint has been filed.
 - Restore or preserve equal access to education program or activity
 - Protect safety of all parties or the recipient's educational environment, or deter sexual harassment
 - Includes: counseling, course-related adjustments, schedule modifications, campus escort services, mutual restrictions on contact, etc.
 - Supportive measures must be confidential
 - Title IX Coordinator is responsible for implementation.



Grievance Process



Grievance Process: Basic Requirements

- **Equal treatment:** Complainants and respondents must be treated equitably during the grievance process.
- **Objectivity:** All evidence must be objectively evaluated during the grievance process
- **Presumption of Innocence:** The institution must presume that the respondent is innocent of all allegations during the grievance process
- **No Bias:** The institution must ensure that all Title IX Coordinators, investigators, decision makers, and other personnel do not have a bias.

Notice Requirements

- When an institution receives a formal complaint, they must provide notice to both parties that include
 - Notice of the grievance process,
 - Notice of the allegations, which must include sufficient details to allow the parties to prepare responses, including identities of the parties, the conduct alleges, and the date and location of the incident.
 - A statement that the respondent is presumed innocent
 - A notice that they may have an advisor of their choice
 - Notice that they may inspect evidence

Dismissal of Formal Complaint

- An institution **MUST** dismiss a formal complaint of sexual harassment when:
 - The allegation does not meet the definition of sexual harassment, or does not comply with the jurisdictional requirements.
- An institution **MAY** dismiss a formal complaint when:
 - A complainant informs the Title IX Coordinator they wish to withdraw
 - The respondent is no longer enrolled or employed
 - If circumstances prevent the gathering of sufficient evidence.

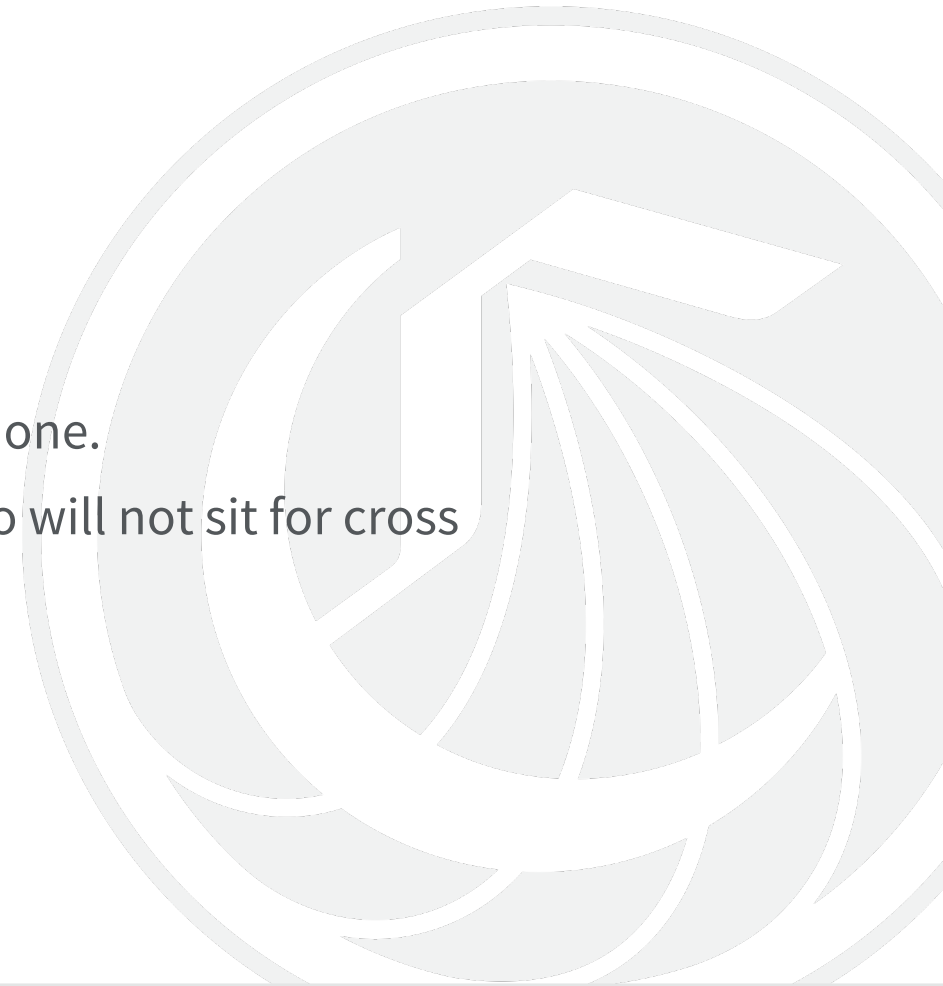
Investigation

- Institutional obligations:
 - burden of proof
 - gather evidence
 - Issue investigative report 10 days before hearing
- Complainant and Respondent Equity:
 - access to evidence and opportunity to present witnesses and evidence.
 - presence of advisor of choice



Live Hearing

- Must be live, but may be remote.
- Advisor's must conduct any cross-examination
- Decision maker must pre-approve questions for relevance.
- The institution must provide an advisor if party does not have one.
- Decision makers cannot consider statements from a party who will not sit for cross examination when determining responsibility.



Appeal

- Both parties must be allowed on the following bases:
 - Procedural irregularities, new evidence, or bias
- Colleges may establish additional bases of appeal equitably
- If a party appeals, the college must provide notice of the appeal to the other party.

Informal Resolution Process

- An institution may offer an informal resolution process at any point prior to the determination of responsibility if:
 - Both parties give written consent and
 - Both parties have the right to withdraw and resume the formal grievance process
- The informal resolution process may not be offered after the determination of responsibility.
- An informal resolution process may not be used when there are allegations that an employee harassed a student.

Record Retention

- Colleges must retain records for 7 years, including:
 - Sexual harassment investigation records including determinations and any disciplinary sanctions, and remedies
 - Records of appeals
 - Records of any informal resolution
 - All training materials.

Implementation

- The new rules must be implemented by August 14.
 - Policy implementation
 - Title IX coordinator appointments and noticing requirements
 - Training requirements
 - Harmonizing Title IX and related processes
 - Ensuring adequate technology infrastructure for hearings and sharing evidence securely.



**Please enter questions in the chat window.
We will follow up with answers for any questions
we can't address in the time allotted today.**