



Armstrong  
Teasdale

# Title IX Regulatory Changes

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# Agenda

TASK No.	DESCRIPTION	AUTHORITY	OWNER(S)	INTERNAL AUDIENCE	STATUS	COMMENTS
1	JURISDICTION TRAINING	20 U.S.C. 1681 § 106.8(d) §106.30(a) §106.44(a) §106.45(b)(3)(ii)		TITLE IX OFFICE; ADVISORS; DECISION-MAKERS; HEARING / APPEAL OFFICERS; HR & STUDENT CONDUCT		(1) EDUCATION PROGRAM (2) LOCATION & CONTROL
2	ADVISOR TRAINING	20 U.S.C. 1681 §106.45(b)(6)(i) §106.45(b)(1)(iii) §106.45(b)(8)		TITLE IX OFFICE; ADVISORS; DECISION-MAKERS; HEARING / APPEAL OFFICERS		(1) CROSS-EXAMINATION (2) RELEVANCE (3) SEXUAL HISTORY QUESTIONS (4) HEARING/APPEAL PROCEDURES
3	TECHNOLOGY TRAINING	20 U.S.C. 1681 §106.45(b)(10) §106.45(b)(6)(i)		TITLE IX OFFICE; ADVISORS; DECISION-MAKERS; HEARING / APPEAL OFFICERS		(1) DOCUMENT RETENTION (2) DATA ENCRYPTION (3) REMOTE ACCESS/VIRTUAL PROCEEDINGS
4	HEARING / APPEAL TRAINING	20 U.S.C. 1681 §106.45(b)(6)(i) §106.45(b)(1)(iii) §106.45(b)(8)		TITLE IX OFFICE; ADVISORS; DECISION-MAKERS; HEARING / APPEAL OFFICERS		(1) CROSS-EXAMINATION (2) RELEVANCE (3) SEXUAL HISTORY QUESTIONS (4) HEARING/APPEAL PROCEDURES
5	MEDIATION TRAINING	20 U.S.C. 1681 §106.45(b)(9)		TITLE IX OFFICE; ADVISORS		(1) TIMING (2) APPLICABILITY (3) PROHIBITIONS

# Jurisdiction

## ■ Definitions:

- *Sexual harassment* – quid pro quo harassment, hostile environment harassment, sexual assault, domestic violence, dating violence and stalking.
- *Hostile work environment* – unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.

## ■ Actual Knowledge:

- The Title IX Coordinator or anyone else with “authority to institute corrective measures for a recipient.”
- Action Item: Decide whom college/university will deem capable of receiving notice of a Title IX complaint.

# Jurisdiction: What Could Fall Under Title IX's Purview?

- **Former students or former employees**
  - If the complainant is not actively participating in or attempting to participate in the education program or activity, Title IX is not triggered.
- **Study abroad**
  - Even though these programs are affiliated with the school, events taking place outside of the United States do not trigger Title IX.
- **Conduct that does not constitute sexual harassment**
  - This could develop in the course of an investigation.
  - However, complaints may still trigger a code of conduct or other policy violation, e.g., student-on-student assault at an apartment complex adjacent to campus (but not owned or operated by the school).

# Action Items: Jurisdiction

- **Revise Title IX policy to conform to new “sexual harassment” definition.**
- **Identify employees who can receive “notice” of a Title IX complaint.**
- **Train Title IX staff (and any other “notice” parties) on what constitutes “sexual harassment” and the limits of Title IX jurisdiction.**
- **Consider whether HR and student policies should be revised to cover harassment and misconduct that will no longer fall under Title IX.**

# Training

- **All individuals involved in the process, including:**
  - Title IX Coordinator and Investigators
  - Hearing Officers
  - Decision Makers
  - Advisors
  - Appeal Officers
- **Training materials must be posted on the school's website or available upon request.**
- **Training should cover Title IX policy materials, hearing procedures and appeal procedures.**

# Action Items: Training

- **Identify training methodology**
  - Global campus training
  - Individualized training for Title IX Office, hearing officers, decision makers, advisors and appeal officers
- **Prepare training deck(s)**
- **Conduct training**

# Hearing Process

- **Post-investigation hearing requirement for colleges and universities**
- **Advisors permitted and must be appointed upon request**
  - The advisor is responsible for examining witnesses, including cross-examination of the complainant and respondent.
- **Technology**
  - Recorded by audio or video. The recording must be available for inspection and review by either party and must be maintained for at least seven years.
  - If requested, the parties may conduct questioning over live-feed circuit in separate rooms where all parties, including the decision-maker, can see and hear one another during the hearing.



# Mediation

- **After a formal complaint has been filed, and only if each party is interested and willing, schools may offer an informal resolution process.**
  - Parties must voluntarily consent to this option in writing.
  - If a complaint involves allegations that an employee sexually harassed a student, the informal resolution process may not be used.
  - Parties who choose this option must still receive notice of the allegations, their rights and information about how to withdraw from the process and resume the grievance process.
- **The informal resolution process is available at any point prior to a final determination being issued.**
  - If the parties choose this option, the school must provide a facilitator.
  - The facilitator must receive specialized training and be free from conflict or bias.

# Action Items: Hearing Process and Mediation

- Identify and recruit hearing officers
- Identify and recruit advisors
- Draft hearing process guide
- Training
  - Title IX policy materials
  - Hearing procedures
  - Advisor training
  - Decision-maker training
  - Appeal procedures
- Mediation training

# Appeal Process

- **Either party has the option to appeal a determination or the dismissal of a complaint on the grounds of:**
  - procedural irregularity that affected the outcome;
  - new evidence that was not reasonably available at the time of determination or dismissal that could affect the outcome; or
  - the Title IX Coordinator, investigator or decision-maker had a conflict of interest or bias that affected the outcome of the matter.
  
- **Schools may establish additional grounds for appeal.**

# Appeal Process (Cont'd)

- Once an appeal is initiated, the non-appealing party must be notified of the appeal and provided an opportunity to submit a written response.
- At the conclusion of the appeal process, the appellate decision-maker must prepare a written decision, which is provided to both parties simultaneously.
- After this process, the decision is final.

# Action Items: Appeals

- Decide whether additional grounds for appeal will be permitted
- Draft policy materials governing appeals
- Identify and recruit appeal officers
- Deliver appeals training

# QUESTIONS?

# Contact



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# Thank you.

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