

Offices of Equity and Inclusion and General Counsel

Title IX Coordinators Training: Revised System Procedure 1B.3.1

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What Is Title IX?

- Title IX is a federal civil rights law enacted to eradicate sex discrimination, in general, in all facets of the educational setting
- By accepting federal funds, institutions agree not to discriminate on the basis of sex or allow the separation of the sexes in curriculum and extracurricular activities, unless permitted by the statute

Title IX

 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.
 20 U.S.\&\text{31681 (1972)}

Timeline

- November 16, 2018 US Department of Education (DOE) Notice of Proposed R-wheaking
- Proposed rule officially published in the federal register on November 29, 2018
- 60 Day Comment Period = January 28, 2019
- Final Rule = May 6, 2020
- Effective Date = August 14, 2020 (to incidents occurring on or after that date)
- Response = revised System Procedure 1B.3.1



Overall Process Map

- Old 1B.3.1 Procedure
 Complaint, Investigation, Decisionaker, internal appeal, Ch. 14 if serious student sanction.
- New 1B.3.1 Procedure
 Formal Complaint, Investigation (with enhanced requirements), Ch. 14, Decisionaker, internal appeal.



Three Quick Deliverables (or To Do's)

Update your web

Notice of Title IX Coordinator

Notice of Non-Discrimination

Each college and university must notify applicants for admission and employment, students, employees and all unions holding collective bargaining agreements with the college and university that the college or university does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX not to discriminate in such a manner. Inquiries about the application of Title IX may be referred to the Title IX Coordinator and/or the United States Department of Education.



Key Elements of the New Procedure

Definition of Title IX Sexual Harassment

- Conduct based on sex that occurs in a college or university's program or activity in the United States that satisfies one or more of the following:
 - An employee of the college or university conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
 - 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 college or university's education program or activity; or
 - Sexual assault, dating, intimate partner, and relationship violence; and stalking as defined in Board Policy 1B.3.

Formal Complaint

Defined as:

Document filed by a complainant or signed by the Title IX Coordinator alleging Title IX sexual harassment against a respondent and requesting investigation.

At the time of filing a formal complaint of Title IX sexual harassment, a complainant must be participating in or attempting to participate in the education program or activity of the college or university with which the formal complaint is filed.

See template

Title IX Coordinator

- Employee designated by the president to coordinate the college or university's efforts to comply with its Title IX responsibilities and Board Policies 1B.1 and 1B.3
- This does not have to be one personan have

Reporting

- Internal Reporting = New Procedure is the same as Old Procedure (3 buckets)
 - Required Reporters.
 - Confidential Resources (not required to internally report).
 - **Encouraged Reporters.**
- Clarifies that reporting is to Title IX Coordinator
- New Information on External Mandatory Reporting

Investigation and Resolution

Title IX Coordinator

Discuss options with complainantsupportive measures, referral to law enforcement, filing a formal complaint, pursuing other policy processes (1B1, student conduct, etc.)

If formal complaint:

Conflict of Interest

- Title IX Coordinator to identify any real or perceived conflict of interest in proceeding as the Title IX Coordinator, for the decisionaker, and/or for any person designated to facilitate an informal resolution
- Assign new person

Interim Actions

- Employee reassignment or administrative leave Discuss with HR/LR
- Student summary suspension
- No real change to prior practice = note that the regulations use the term "emergency removal."

Dismissals, continued

 And remember -at the time of filing a formal complaint of Title IX sexual harassment, a complainant must be participating in or

Investigatory Process

- Essentially the same as the 1B.1.1 investigatory process, BUT:
 - Required presumption of innocence notice in notice of allegations (see template).
 - Consider bothinculpatoryand exculpatory evidence.
 - Not use questions or evidence that involve a legally recognized privilege.
 - Before completing investigation reportsend to both the complainant and respondent and their advisors, if any, the evidence subject for inspection and review. Both parties must have at least 10 calendar days to submit a written response to the evidence, which must be considered before completing the report.

Timely Completion

- Timely completion after a complaint = no strict timeline
- Reasonable cause for delay includes considerations such as:
 - Absence of a party, an advisor, or a witness;
 - Concurrent law enforcement activity;
 - The need for language assistance or accommodation of disabilities.

Formal Hearing

If complaint not resolved then:

Prepare investigation report; and

Standard of Evidence

Remains preponderance of the evidence.

Decision-maker

ALJ prepares report and recommendation

Appeals

- Within ten (10) calendar days
- Both parties may appeal final decision and an appeal of a dismissal of a formal complaint

When Student Discipline Final

Either

Date of written determination on appeal; or If no appeal, the date on which the appeal would no longer be timely.

Advisors

Process Advisors

Available to provide guidance on hearing process

Both complainant and respondent may have an advisor of their choice;

Campus will provide if either party does not have their own.

Can be but not required to be an attorney

Advisors at the Ch. 14 Hearing.

May also be the process advisor?

Both complainant and respondent may have an advisor of their choice.

Campus will provide if either party does not have their own.

Education and Training

 Any materials used to train Title IX Coordinators, investigators, decisiomakers, and any person who facilitates an informal resolution process, must be made publically available on the college or university's website.

Document Retention

• 7 years.

Deeper Dive on Intake

Intake

- Initial thoughts original original discretionary dismissals.
- Explain formal complaint process for Title IX sexual harassment.
- Discuss policy options with complainants.
- Consider wishes of complainant but also interest of the college or university.
- Remember basic legal responsibility = deliberate indifferent standard.

Notice of Allegations

 Upon formal complaint, provide written notice to both parties including:

Interim Actions

- Institution may remove a respondent from the education program or activity on an emergency basis if institution:
 - Undertakes an individualized safety and risk analysis;
 - Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifies removal; and
 - Provides the respondent with notice and an opportunity to challenge the decision immediately following removal.

Offering Supportive Measures

- Non-disciplinary, norpunitive individualized services
- Offered as appropriate, as reasonably available, and without fee or charge to complainant or respondent
- Before or after the filing of a formal complaint or where no formal complaint has been filed

Supportive Measures (cont.)

- Designed to restore or preserve equal access to education program or activity, without unreasonably burdening the other party
- Includes measures designed to protect safety
 - Of all parties
 - **Educational environment**
 - Deter sexual harassment
- Must maintain as confidential as long as confidentiality does not impact ability of the institution to provide measures

Informal Resolution Path

- May never require the parties to participate in an informal resolution process.
- May not condition enrollment/continuing enrollment, employment/continuing employment, or enjoyment of any other right on waiver of the right to an investigation and adjunction of formal complaint.
- May not offer or facilitate informal resolution to resolve allegations that an employee sexually harassed a student.

Conclusion of the Interview

- Thank the complainant for bringing the issue forward
- Give them your contact information in case they remember anything
- Explain future procedures and timeline

Questions & Answers

Please Chat in your questions to the host or the panelists.

Websites

Office of Equity and Inclusion https://www.minnstate.edu/system/equity/

Office of General Counsel http://www.minnstate.edu/system/ogc/