

# TITLE IX EMPLOYEE REPORTING AND TRAINING REQUIREMENTS

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# THIS SESSION'S TOPICS:

- Employee Reporting Requirements
- Training Requirements
  - Who
  - What
  - When
  - How

# EMPLOYEE REPORTING REQUIREMENTS

# REPORTING GENERALLY

Title IX reporting requirements are distinguished from other federal laws (e.g., the Violence Against Women Act (VAWA), the Clery Act, and Title VII)) that establish responsibilities for the reporting of certain crimes and incidents but, in some cases, there may be overlap and a responsibility to report under some or all of these laws.

# REPORTING GENERALLY

On the other hand, an employee may have a responsibility to report under other federal law, but not under Title IX.

# RESPONSIBLE EMPLOYEES

The regulations permit institutions to decide which employees must, may, or must only with a student's consent, report sexual harassment to the Title IX Coordinator. *34 C.F.R. § 106.44(a)*.

To make things easier for employees, some institutions choose a blanket mandated reporting responsibility for all employees to make

# RESPONSIBLE EMPLOYEES

BUT... Even in the absence of such a mandate, employees who are **officials with authority to institute corrective measures:**

- Are “responsible employees” AND
- **Must report** sexual harassment/discrimination to the Title IX Coordinator.

# RESPONSIBLE EMPLOYEES

The regulations do not provide examples of individuals that institutions should designate as responsible employees, but specify that a school “may, at its discretion...designate specific employees as officials with this authority for purposes of Title IX sexual harassment and may inform students of such designations.”



# RESPONSIBLE EMPLOYEES

Under USHE's Model Policy, responsible employees include:

- The **president** and all employees reporting directly to the president;
- All **supervisors** so long as reports concern their direct or indirect subordinates as potential complainants or respondents; and
- The **VP of Student Affairs**, all employees reporting directly to the VP of Student Affairs, and all college deans when reports concern students as potential complainants or respondents.

# RESPONSIBLE EMPLOYEES

The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient.” *34 C.F.R. § 106.30(a)* (defining “actual knowledge”); *34 C.F.R. § 106.8(a)*.

# RESPONSIBLE EMPLOYEES

In other words, the mere fact that your employees or staff have been trained on how to report sexual harassment does not make them responsible employees (obligating them to report sexual harassment if it is disclosed to them).

# EMPLOYEES WHO ARE NOT “RESPONSIBLE EMPLOYEES”

Faculty, staff, and students who are **not** “**responsible employees**” who become aware of sex discrimination or harassment are **encouraged, but not required, to report** such issues, with the consent of the alleged victim, to the Title IX Coordinator.

# MENTAL HEALTH AND MEDICAL PROFESSIONALS

Licensed mental health counselors and medical professionals working in the scope of their license as well as designated advocates authorized by the Title IX Coordinator **may generally *not* report incidents of sexual harassment except** with written consent, in instances of imminent danger, or when the victim is a minor or vulnerable adult.

# REPORTING ABUSE OF A CHILD

Additionally, consistent with Utah Code § 80-2-602, **anyone who reasonably suspects sexual harassment or abuse involving a minor** shall immediately report to campus police or the local police department.

Employees who become aware of allegations involving a minor shall:

- Report to police;
- Notify the Title IX Coordinator; and
- Notify their supervisor.

## ASK...

Who needs to know about Title IX and what do they need to know about it to ensure that sexual harassment is reported to the Title IX Coordinator?

# EMPLOYEE TRAINING REQUIREMENTS



# WHO MUST BE TRAINED

- Title IX Coordinator
- Investigator(s)
- Decision-maker(s)
- Informal resolution process facilitators
- Responsible employees
- Campus Community

# WHAT MUST BE COVERED – FOR EVERYONE

- Sexual harassment definition(s) listed in regulations

“Sexual harassment means conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct; (2) 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; or (3) ‘Sexual assault’ as defined in 20 U.S.C. 1092(f)(6)(A)(v), ‘dating violence’ as defined in 34 U.S.C. 12291(a)(10), ‘domestic violence’ as defined in 34 U.S.C. 12291(a)(8), or ‘stalking’ as defined in 34 U.S.C. 12291(a)(30).” 34 C.F.R. § 106.30(a).

# WHAT MUST BE COVERED – FOR EVERYONE

- The scope of your institution's education programs/activities
- Your institution's grievance process, including:
  - Live hearings (including technology used)
  - Appeals
  - The informal resolution process
  - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

# WHAT MUST BE COVERED – INVESTIGATORS

Investigators must also be trained on:

- How to conduct an investigation; and
- Issues of relevance in order to create an investigative report that fairly summarizes relevant evidence

# WHAT MUST BE COVERED – DECISION-MAKERS

Decision-makers should also be trained on:

- How to determine issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- Evidentiary standards (e.g., preponderance of the evidence)
- Live hearing procedures

# WHAT MUST BE COVERED – RESPONSIBLE EMPLOYEES

Responsible employees must be trained on definitions and the purpose of Title IX, what it means to be a responsible employee, and how to report information to the Title IX Coordinator.

# WHAT MUST BE COVERED – CAMPUS COMMUNITY

An institution must publish a sexual harassment policy and a **notice of non-discrimination** that notifies applicants for admission and employment, students, employees, etc. that your institution does not discriminate on the basis of sex as required by Title IX.

The notice must include:

- Contact information for the Title IX Coordinator;
- That questions about Title IX may be referred to the Title IX Coordinator.

# WHAT MUST BE COVERED – CAMPUS COMMUNITY

Your institution's website must also list the Title IX Coordinator's name, address, email address, and phone number, and contain readily accessible information for how to make a report to the Title IX Coordinator.



# WHAT MUST BE COVERED – CAMPUS COMMUNITY

Under the Violence Against Women’s Act (VAWA), institutions must offer **new students and new employees “primary prevention and awareness programs”** that promote awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking.

# WHEN/HOW OFTEN IS TRAINING REQUIRED?

The regulations do not specify when training must occur, how long it must be, or how often it should be provided.

The bottom line is that information about potential sexual harassment/discrimination needs to get to the Title IX Coordinator.

# TRAINING MATERIALS

Must:

- Not rely on sex stereotypes
- Promote impartial investigations and adjudications of formal complaints of sexual harassment
- Be maintained for seven years
- Be made publicly available on your website

# HOW TO FRAME TRAINING MATERIALS

Should:

- Be carefully reviewed to ensure that no bias or sex stereotypes exist
- Avoid citing studies or articles that appear to favor complainants or respondents in sexual harassment cases
- Use hypothetical scenarios that use all genders in both the complainant and respondent role
- Avoid using words that assume culpability like “rapist” or “victim”
- Emphasize that investigators and hearing officers are neutral factfinders



# QUESTIONS?

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