



ELEMENTS REQUIRED TO ENGAGE THE TITLE IX PROCESS

with Jody Shipper

AGENDA

- | Title IX Overview
- | Roles of Complainant & Respondent
- | Scope of Program or Activity & Substantial Control
- | Review and Practice

TITLE IX OVERVIEW

01

TITLE IX

Title IX of the Education Amendments Act of 1972

"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.C. § 1681 (1972).



SEXUAL HARASSMENT: SECTION 106.30

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 **severe, pervasive, and objectively offensive** that is **effectively denies** to a person equal access to the recipient's education program or activity

3

"**Sexual assault**" as defined in 20 U.S.C 109(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).

COMPLAINANT AND RESPONDENT

Complainant

An individual who is alleged to be the victim of conduct that could constitute sexual misconduct.

Respondent

An individual who has been reported to be the one responsible for conduct that could constitute sexual misconduct.

REPORTS VS. FORMAL COMPLAINTS

Reports

- Can be made by anyone who is aware of conduct
- Makes the institution aware of potential misconduct
- Requires a response from the institution

Formal Complaints

- Written, signed document, identifying the respondent and requesting a resolution or investigation
- In institutions of higher education, can only be signed by the complainant, or in limited circumstances, the Title IX Coordinator

STATUS REQUIREMENTS FOR PARTIES

02

COMPLAINANT

“At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.” 34 C.F.R. § 106.30



RESPONDENT & SUBSTANTIAL CONTROL

Events or circumstances over which the institution exercised substantial control over **BOTH** the Respondent **AND** the context in which the sexual harassment is alleged to have occurred.

-Section 106.30 and 106.45 of the 2020 Title IX Regulations



Seeking
employment or
admission



Accepted for hire
or admission but
not yet begun



Working or
enrolled at the
institution

JURISDICTION: SCOPE OF PROGRAM OR ACTIVITY

03



COVERED LOCATIONS

Institution's Program or Activity

Includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the respondent and the **context in which the sexual harassment occurs**

- On campus or in a building owned or controlled
- The incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution
- Institution sponsored event or trip
- Off-campus incident that occurs as part of the institution's operations
- Within the United States

SUBSTANTIAL CONTROL REVIEW

Conduct
occurred on
campus

In a building
owned or
controlled by
the institution
or an
officially
recognized
student
organization

During an
institutionally
sponsored
event or trip
AND within
the United
States

EXAMPLES



A sexual assault alleged to have occurred in an on-campus residence hall.



An employee who is alleged to have touched a colleague on the buttocks without their consent at an out-of-town conference where both employees were representing the institution.



Sexual harassment alleged to have occurred on a bus during a trip to or from an athletic conference.



Sexual assault alleged to have occurred at an event in an off-campus house rented by a recognized fraternity or sorority.

REVIEW & PRACTICE

04

EVALUATING THE ELEMENTS



Signed formal
complaint

Conduct meets the definition of Title
IX sexual harassment

Complainant's
participation in
an education
program or
activity

Substantial
control over
Respondent

Substantial
control over
the context

EXAMPLES



An applicant for admissions reports being groped by a current student while on their campus tour.



A teaching assistant is asked out repeatedly by their supervising faculty member.



A non-affiliated individual submits a report alleging they were sexually assaulted by a current student in an on-campus residence hall while they were visiting a friend.

Let's Review!

Complainant and the Respondent must be actively connected to the institution.

Complainant's participation in an education program or activity.

Alleged misconduct must have taken place within the United States

Substantial control over Respondent and the context.





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