

WCUI

**TITLE IX  
TRAINING**

**August 14, 2020**

## Prohibits Sex Discrimination

No person in the United States shall on the basis of **sex**, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance

20 U.S.C. Section 1681 and 34 C.F.R. Part 106 (1972)

# Introduction

- ▶ On May 19, 2020, the Department of Education published the Title IX Final Rule (85 Fed Reg 30026) which takes effect on August 14, 2020
- ▶ For the first time, the new regulation codifies that Sexual Harassment is prohibited under Title IX
- ▶ Today we will be providing an overview of the new regulation and your role in the Title IX grievance process as outlined in WCUI's Title Policy ("Title IX Policy"), which is located on the consumer information tab of WCUI's website
- ▶ **Review the entire Title IX Policy in its entirety.**

## What is Sexual Harassment?

- ▶ Under the 2020 Final Rule, Sexual Harassment is conduct on the basis of sex that falls into one or more of the following 3 categories
- ▶ Definition located in 34 CFR 106.30

## 1. Quid Pro Quo

- ▶ An employee of the school conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct;

## 2. Hostile 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 College's education program or activity; or

### 3. Sexual Violence

- ▶ “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)

## Sexual Violence

- ▶ **Sexual Assault:** As defined in 20 U.S.C. 1092(f)(6)(A)(v), means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- ▶ **Dating Violence:** As defined in 34 U.S.C. 12291(a)(10), means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and, the frequency of interaction between the persons involved in the relationship.

## Sexual Violence

- ▶ **Domestic Violence:** As defined in 34 U.S.C. 12291(a)(8), includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- ▶ **Stalking:** As defined in 34 U.S.C. 12291(a)(30), means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

## Clery/VAWA Interaction

- ▶ Clery (Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act) Crime Statistics are reported based on federal definitions
- ▶ Violence Against Women Reauthorization Act of 2013 (“VAWA”) requires inclusion of state definitions for Sexual Assault, Dating Violence, Domestic Violence, Stalking and Consent are contained in the Annual Safety and Security Report (“ASR”)

## Title IX Coordinator

- ▶ WCUI's Title IX Coordinator oversees compliance with all aspects of the Title IX Policy and is designated to intake reports and Formal Complaints of Sexual Harassment, provide supportive measures, and investigate Formal Complaints of Sexual Harassment.

### **Title IX Coordinator**

Lisa Ingoldsby  
3580 Wilshire Blvd. 4<sup>th</sup> Floor  
Los Angeles, CA 90010  
(310) 289-5123

[TitleIXCoordinator@wcui.edu](mailto:TitleIXCoordinator@wcui.edu)

- ▶ Anyone can report sex discrimination (including Sexual Harassment) even if they are not the victim

## Title IX Coordinator Deputies

- ▶ Available by campus
  - ▶ Los Angeles: Maria Loja
  - ▶ Ontario: Bea Rodriguez
  - ▶ Phoenix: Deanna Martin
- ▶ Responsible for intaking reports and Formal Complaints of Sexual Harassment and providing supportive measures. May also investigate Formal Complaints of Sexual Harassment

## Title IX Coordinator Visibility

- ▶ Contact information must be posted on website and in each handbook or catalog provided to prospective/current students and employees
  - ▶ Name or title, office address, email address, and telephone number
- ▶ Copy of grievance procedures and grievance process, including how to report or file a complaint and how the institution will respond
  - ▶ must be distributed to all prospective/current students and employees

## Response

- ▶ WCUI must respond when it (1) has actual knowledge of Sexual Harassment; (2) that occurred within WCUI's education program or activity; (3) against a person in the United States.
- ▶ Actual knowledge is a report is made to the Title IX Coordinator or an Official With Authority (someone who can implement corrective measures on behalf of WCUI)
- ▶ Campus Directors, Directors of Education and Corporate members are designated Mandatory Reporters who must share all knowledge, reports and incidents of sex discrimination, Sexual Harassment (including Sexual Violence) and retaliation with the Title IX Coordinator

## Program or Activity

- ▶ WCUI's education program or activity is defined as on or off campus locations, events or circumstances over which WCUI exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurred

## Emergency Removal.

- ▶ WCUI may temporarily remove an individual from campus on an interim basis during the pendency of a Formal Complaint in limited emergency circumstances where there is an immediate threat to physical health or safety.
- ▶ Before taking this emergency measure, the school will:
  - ▶ Undertake an individualized safety and risk analysis (Title IX Coordinator and Campus Director) to determine whether there is an immediate threat to physical health or safety
  - ▶ Make an affirmative determination that such an immediate threat exists based on its individualized safety and risk analysis; and
  - ▶ Provide the Respondent with notice and an opportunity to challenge the emergency decision immediately following the Respondent's removal.
- ▶ WCUI will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns

## Supportive Measures

- ▶ Title IX Coordinator must promptly and confidentially contact Complainant and offer supportive measures.
- ▶ Offered regardless of whether or not Complainant has filed a Formal Complaint
- ▶ Consider Complainant's wishes
- ▶ Title IX Coordinator must explain the process of filing a formal complaint.
- ▶ Title IX Coordinator responsible for implementation - reasonably available

## Supportive Measures

- ▶ Required in all cases (formal complaint not needed)
- ▶ Individualized, appropriate and reasonably available
- ▶ Designed to preserve or restore equal access
- ▶ Provided without charge
- ▶ Non-disciplinary and non-punitive
- ▶ Available to Complainant and Respondent, as applicable
- ▶ Confidential

## Supportive Measures

- ▶ Designed to:
  - ▶ Restore or preserve access to the institution's education program or activity
  - ▶ Without unreasonably burdening the other party
  - ▶ Protect the safety of all parties and the institution's educational environment, and
  - ▶ Deter Sexual Harassment

## Examples of Supportive Measures

- ▶ Counseling
- ▶ Extensions of deadlines or other course-related adjustments
- ▶ Modifications of work or class schedules
- ▶ Campus escort services
- ▶ Mutual restrictions on contact between the parties
- ▶ Changes in work or housing locations
- ▶ Leaves of absence
- ▶ Increased security and monitoring of certain areas of the campus

# Formal Complaint

- ▶ WCUI will investigate every Formal Complaint of Sexual Harassment
- ▶ A Formal Complaint is a document (hardcopy or electronic) filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that WCUI investigate
- ▶ A Formal Complaint must be signed (physical or digital) by the Complainant, the Title IX Coordinator or otherwise indicate that that Complainant is the person filing the Formal Complaint
- ▶ When filing a Formal Complaint, the Complainant must be a current or prospective student/employee of WCUI
- ▶ The Title IX Coordinator will respect the Complainant's wishes as to whether the Title IX Coordinator investigates an allegation of Sexual Harassment unless the Title IX Coordinator determines that not investigating would be deliberately indifferent or harmful to the WCUI community
- ▶ Formal Complaints involving employees will also be referred to the Human Resources Department and simultaneously evaluated under applicable employee conduct policies and procedures outlined in the Employee Handbook

## Informal Resolution

- ▶ After a Formal Complaint is filed, WCUI may (discretionary based on facts) offer the parties the opportunity to engage in an informal resolution process such as a mediation
- ▶ Before proceeding with an informal resolution process, both parties must give voluntary, informed, written consent.
- ▶ Any party may withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint at any point prior to agreeing to a resolution
- ▶ Informal resolution cannot be utilized where an employee is alleged to Sexually Harassed a student

# Grievance Process

- ▶ Formal Complaint Received by Title IX Coordinator
- ▶ Optional Informal Resolution Process
- ▶ Investigation
- ▶ Live Hearing
- ▶ Decision and Remedial Measures
- ▶ Appeal

## Roles

Title	Responsibilities	Training	Status
Title IX Coordinator	Intake reports and complaints, initiate formal complaint, supportive measures	Sexual harassment definition, scope of education program, how to conduct and investigation, grievance procedure (hearing, appeals informal resolution), impartiality	Must be institution employee Cannot serve as decision-maker
Investigator	Conduct a fair, objective and impartial investigation	Impartiality, how to conduct an investigation, issues of relevance, rape shield, report-writing	Employee or 3 <sup>rd</sup> party Cannot serve as decision-maker
Decision-maker	Evaluate evidence, determine relevancy during hearing, make and issue determination	Sexual harassment, hearing process, technology to be used in hearing, issues of relevance, evidence, rape shield	Employee or 3 <sup>rd</sup> party Cannot serve in any other capacity
Advisor(s)	Question opposing party and witnesses during hearing	None required	Party provided Employee or 3 <sup>rd</sup> party
Informal Resolution Facilitator	Conduct informal resolution process	Informal resolution process	Employee or 3 <sup>rd</sup> party

# Notice of Allegations

- ▶ Upon receipt of a Formal Complaint of Sexual Harassment, Title IX Coordinator will provide written notice of the allegations to the parties.
- ▶ Notice includes sufficient details of the allegations, including the identities of the parties involved, policy alleged to have been violated, the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known) in order to allow the parties to prepare for an initial interview
- ▶ Inform the parties that they may have an advisor of their choice
- ▶ Include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the entire grievance process.
- ▶ Inform the parties that they are prohibited from knowingly making any false statement or knowingly submitting false information during the grievance process.
- ▶ An instruction to preserve any evidence that is directly related to the allegations.
- ▶ The name of the investigator, along with a process to identify (in advance of the interview process) to the Title IX Coordinator any conflicts of interest that the investigator may have

## Additional Notice

- ▶ The parties will also be provided with separate written notice of any investigative interview, meeting or hearing.
- ▶ Interview/meeting notices will include the date, time, location, participants and purpose of the investigative interview or meeting.

## Selecting an Investigator

- ▶ Title IX Coordinator
- ▶ Other school employee (if trained)
- ▶ Third party
- ▶ Cannot be the Decision-Maker

→ Generally, Title IX Coordinator will be investigator

# Investigation

- ▶ Impartial, fair and objective
- ▶ Burden on the institution
- ▶ No gag-orders
- ▶ Right to an advisor
- ▶ Dismissal
- ▶ Written notice with sufficient time to prepare
- ▶ Equal opportunity for the parties to present fact and expert witnesses and other evidence
- ▶ Investigative report
- ▶ 90 days for Grievance Process (through appeal)

## Consolidation

- ▶ Complaints against multiple respondents or by multiple complainants may be consolidated
- ▶ May consolidate investigations where the complaints arise out of the same facts or circumstances

# Dismissal

- ▶ WCUI must dismiss any complaint that:
  - ▶ Does not constitute Sexual Harassment;
  - ▶ Did not occur in the program or activity; or,
  - ▶ Did not occur against a person in the United States.
- ▶ WCUI may dismiss a complaint if:
  - ▶ Complainant withdraws the complaint
  - ▶ Respondent is no longer enrolled or employed
  - ▶ Circumstances prevent institution from investigating
- ▶ Dismissal does not prevent action under code of conduct

## Tips for an Investigation

- ▶ Select an investigator carefully
- ▶ Begin promptly
- ▶ Prepare before interviews - review Formal Complaint, school policies, etc.
- ▶ Conduct a thorough investigation - when, where, what, who - cover the same questions with all interviewees
- ▶ Avoid yes/no questions
- ▶ Gather evidence
- ▶ Document, document, document

## Access to Evidence

- ▶ Both parties must be given an equal opportunity to review and inspect evidence that:
  - ▶ Was obtained as part of the investigation; and
  - ▶ Is directly related to the allegations
- ▶ Includes evidence that the school does not intend to rely on in making a determination of responsibility
- ▶ Restrictions on Evidence: WCUI cannot use, rely on or seek disclosure of information protected under legally recognized privilege unless party has waived privilege
  - ▶ ex: Attorney/Client, Doctor/Patient

# Investigative Report

- ▶ Summarizes relevant evidence
- ▶ No conclusions
- ▶ Demonstrate how WCUI responded appropriately to the allegations
- ▶ Put Decision-Maker in best possible position to understand relevant evidence for the live hearing
- ▶ Must be maintained for 7 years

# Opportunity to Inspect and Respond

- ▶ Prior to issuing investigative report
  - ▶ Send the parties evidence directly related to the allegations with at least 10 days to review and submit a written response
- ▶ Prior to Live Hearing or other determination
  - ▶ Send the parties the investigative report that fairly summarizes relevant evidence at least 10 days prior to a hearing for review and written response

## Advisors

- ▶ Parties have the right to select an advisor during an investigation and hearing
- ▶ If the Complaint goes to a live hearing, the parties must have an advisor
- ▶ If the party does not have an advisor, the school must provide, without charge, an advisor of the school's choice
- ▶ Only advisors may conduct cross-examination of witnesses
  - ▶ Advisors do not need to receive training on impartiality, conflicts of interest/bias

## Live Hearing

- ▶ Facilitated by Decision-Maker (employee or 3<sup>rd</sup> Party – cannot be Title IX Coordinator or Investigator)
- ▶ Requirements for a live hearing include:
  - ▶ Opportunity for parties' advisors to examine and cross-examine witnesses, including challenging the credibility of witnesses
  - ▶ Examinations must be direct, oral, and in real time (Advisors)
  - ▶ Parties may be required to stay in separate rooms with a live video + audio connection
  - ▶ Only relevant questions may be asked

## Refusing Cross-Examination

- ▶ If a party does not submit to cross-examination at a live hearing, the Decision-Maker cannot rely on that party's statements in reaching a determination
  - ▶ Does not apply to Decision-Maker (neutral fact finder, not cross examination)
- ▶ Decision-Maker also cannot draw an inference regarding responsibility based solely on that party's absence from live hearing

# Relevance

- ▶ Evidence is relevant if it is pertinent to proving whether facts material to the allegations are more or less likely to be true
  - ▶ Repetition of the same question is irrelevant
- ▶ A Complainant's sexual predisposition or prior sexual behavior is not relevant, unless:
  - ▶ Offered to provide that someone other than the Respondent committed the alleged conduct; or
  - ▶ To prove consent
- ▶ Relevant questions in live hearing determined by Decision-Maker

# Making a Determination

- ▶ Review WCUI policy
- ▶ Review the evidence
- ▶ Assess credibility of evidence and witness statements
  - ▶ Credibility = assessing the extent to which you can rely on the statement
- ▶ Assess consistency of the story
- ▶ Evaluate evidence in light of standard of evidence
  - ▶ Preponderance of the Evidence

## Written Determination

- ▶ Use published standard of evidence
- ▶ Identify the allegations constituting sexual harassment
- ▶ Describe procedure from formal complaint through hearings
- ▶ Make findings of fact and conclusions
- ▶ Provide a rationale for the outcome on each allegation and imposition of any sanctions
- ▶ State the procedures and allowable bases for any appeal
- ▶ Be provided simultaneously to both parties

# Sanctions

- ▶ Determined by Decision-Maker
- ▶ Imposed on the Respondent
- ▶ Reasonable based on the severity of the behavior
- ▶ May be educational
- ▶ Determine what is appropriate based on the case specifics
- ▶ Take steps to confirm and document sanctions were enforced
- ▶ Examples: warning, suspension, termination, no contact, counseling, additional training

## Remedies

- ▶ Title IX Coordinator is responsible for implementation
- ▶ Required to be provided to a Complainant when a Respondent is found responsible
- ▶ Must be designed to maintain Complainant's equal access to education and may include supportive measures
- ▶ Remedies do not need to be non-disciplinary or non-punitive and do not need avoid burdening the respondent

# Appeals

- ▶ Policy provides for appeals for both parties
- ▶ The bases for an appeal must include:
  - ▶ procedural irregularity affected the outcome of the matter
  - ▶ newly discovered evidence that could affect the outcome of the matter
  - ▶ Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter

## Record Keeping

- ▶ Seven years
- ▶ Sexual Harassment investigations, including any determination regarding responsibility and any audio or audiovisual recording or transcript, any Disciplinary Actions imposed on the Respondent, and any Remedies provided to the Complainant designed to restore or preserve equal access to the education Program or Activity;
- ▶ Any appeal and the result therefrom;
- ▶ Any informal resolution; and
- ▶ All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process
- ▶ Supportive Measures

# Retaliation

- ▶ WCUI policy effectively prohibits retaliation
- ▶ Prohibits intimidation, threats, coercion, or discrimination for making a complaint or participating in process
- ▶ Retaliation does not have to be on the basis of sex or involve sexual harassment
- ▶ Report retaliation to Title IX Coordinator

## Fair and Impartial Investigation

- ▶ § 106.45 requires recipients to adopt a grievance process where Title IX Coordinators, investigators, decision-makers, and persons who facilitate informal resolutions are free from conflicts of interest and bias and are trained to serve impartially without prejudging the facts at issue

## Why Does it Matter?

- ▶ The Department sought to:
  - ▶ Improve perceptions that Title IX sexual harassment allegations are resolved fairly and reliably
  - ▶ Avoid intentional or unintentional injection of sex-based biases and stereotypes into Title IX proceedings, and
  - ▶ Promote accurate, reliable outcomes, all of which effectuate the purpose of Title IX to provide individuals with effective protection from discriminatory practices

# Impartiality

- ▶ Cannot have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent
- ▶ Avoid prejudgment of the facts at issue
- ▶ No one should be automatically believed or not believed
- ▶ Investigators must objectively evaluate all relevant evidence
  - ▶ Inculpatory: evidence that shows or tends to show Respondent's responsibility
  - ▶ Exculpatory: evidence that shows or tends to show the Respondent is not responsible

# Bias

- ▶ Prejudice in favor of or against an individual or situation
- ▶ Disproportionate weight in favor or against certain facts that prevents objectivity
- ▶ Insensitivity to facts that otherwise would be significant
- ▶ Avoid inferences based on whether someone is a Complainant or Respondent

## Conflicts of Interest

- ▶ When an individual has competing interests or loyalties
- ▶ Potential to reap personal gain from decisions, actions or inaction
- ▶ Inclination to filter decisions through lens of self-interest

Questions?