


Prevention And Remediation of Gender Discrimination

- ! Equity in programs and operations.
 - ! Access and admissions.
 - ! Academic programs.
 - ! Recruitment, promotion, and hiring.
 - ! Compensation and benefits.
 - ! Discipline and discharge.
 - ! Athletics (more on this later).
 - " Including, inter-collegiate, intra-mural, and sports clubs.
- ! All student organizations and activities.
 - " Fraternities and sororities are exempted from membership equity.

CASE STUDY



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Prevention and Remediation of Bullying and Cyberbullying

- ! Bullying is:
 - ! Repeated and/or severe
 - ! Aggressive behavior
 - ! Likely to intimidate or intentionally hurt, control, or diminish another person, physically, or mentally,
 - ! That is not speech or conduct otherwise protected by the First Amendment.
- ! It often:
 - ! Includes repetitive comments about race, color, 5 (n)-ivvo135 (n)

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OVERSIGHT OF PROMPT AND EQUITABLE GRIEVANCE PROCEDURES

- ! Timeframes
- ! Equity Defined
- ! Preponderance Standard
- ! Evidence Thresholds
- ! Barriers and Problems

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Oversight and Coordination of Prompt and Equitable Grievance Procedures

- ! Prompt:
 - ! This is the 60-day guidance for investigation outlined in the Dear Colleague Letter.
 - " There is not an exception for summer break, but possible for winter or spring breaks.
 - " A forensic collection of evidence by law enforcement will garner a 7-10 day extension (up to two weeks in extreme circumstances).
 - " Pending criminal or civil actions are not reasons for delay.
 - ! What about delays by the reporting party?
 - " Injunctions.
 - " Notice of extensions.

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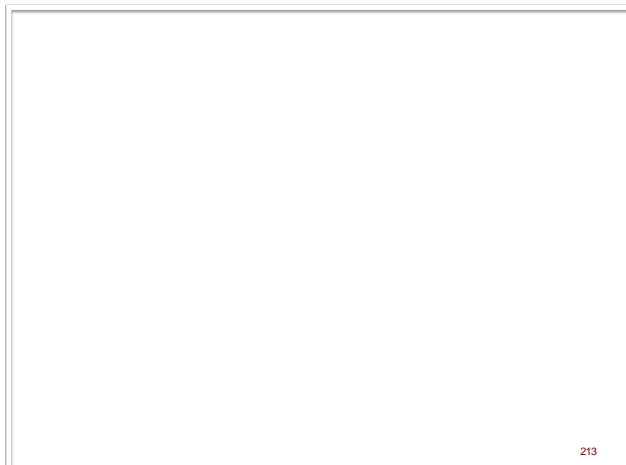
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Oversight and Coordination of Prompt and Equitable Grievance Procedures

- ! How to ensure prompt procedures:
 - ! The investigation must be conducted according to the timelines in the institution's policy.
 - " (Be very careful about wording your policy. Use reasonable delays at the discretion of the Title IX administrator, barring exigent circumstances, etc.

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Oversight and Coordination of Prompt and Equitable Grievance Procedures

- ! The coordinator's role:
 - ! A sexual harassment grievance procedure is not prompt and equitable unless students and employees know it exists, how it works, and how to file a complaint.
 - ! Ensure that the notice of complaint procedure is published and posted widely, in the publications and information sources that are most commonly read and used & easily located.
 - ! Procedures should be written in a manner that is easily understood.

Oversight and Coordination of Prompt and Equitable Grievance Procedures

- ! The coordinator's role (cont.):
 - ! Clearly identify the individuals to whom discrimination complaints can be submitted.
 - ! Periodically review and update grievance procedures to ensure they comply with Title IX requirements.
 - ! Confirm that new or revised grievance procedures are posted and published promptly and that old procedures are removed from publications and websites.
 - " Beware multiple conflicting or varying versions of published policy.

Role of Campus Law Enforcement in Civil Rights Investigations?

- ! Can campus law enforcement be the Title IX investigatory arm?
 - ! Should it be?
 - ! Legal standards for criminal investigations are different.
 - ! Police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively.
- ! Establish MOUs with campus police and other local enforcement and update annually.
 - ! The power of the tabletop exercise.

Elements of an Investigation

- ! Incident.
- ! Complaint or notice (actual or constructive).
- ! Preliminary investigation/inquiry (initial strategy).
- ! Gatekeeper determination (throughout process).
- ! Strategize investigation.
- ! Formal comprehensive investigation (48 (v)-8 (e)48)

Gatekeeping in Investigations

! The gatekeeper of the process determines the extent and development of the investigation, moving it from preliminary to full investigation and identifying timing for charges and strategy development.

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Factors to Consider for Credibility

- ! Demeanor.
 - ! Nonverbal language.
 - ! Demeanor issues should be your cue to ask more questions.
- ! Non-cooperation.
 - ! Look for short, abrupt answers or refusal to answer.
- ! Logic/consistency.
 - ! E.g.: "I'm struggling to develop a timeline based on your statements, could you clarify?"
- ! Corroborating evidence.

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Making Credibility Determinations

- ! Look at consistency of story substance and chronology of statements.

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Assurance of First Amendment Protections

{ "Congress shall make no law abridging the freedom of speech" }

- ! An important concern for all public institutions and any private campuses impacted by state law and constitutions (e.g., California and New Jersey).
- ! Impacts policy language regarding expression.
- ! Pay heed to vagueness & over breadth concerns.
- ! Avoid incorporating "intent" or "purpose" language.
- ! Incorporate appropriate standard for context.

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Assurance of First Amendment Protections

- ! Issues to consider:
 - ! Time, place, and manner.
 - ! Open forum, limited open forum, and closed forum.
 - ! Confluence with academic freedom (faculty).
 - ! Unprotected speech.
 - " Incitement of disruption and breach of peace; defamation; true threat; and obscenity.
 - ! Outside speakers.
 - ! Hate speech.

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PREVENTION AND REMEDIAION OF RETALIATION

- ! Basic Legal Principles
- ! Jackson v. Birmingham Bd. Of Education
- ! Investigating Retaliation

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Retaliation Basic Legal Principles

- ! The Title IX regulations prohibit recipients from engaging in any adverse action against a person because of that person's participation in a protected activity.
- ! Protected activity under Title IX:
 - ! Reporting sex discrimination, including sexual harassment and assault.
 - ! Filing a discrimination complaint.
 - ! Assisting someone in reporting discrimination or filing a complaint.
 - ! Participating in any manner in an investigation of discrimination, for example as a witness.
 - ! Protesting any form of sex discrimination (including, e.g., lack of equity in athletics).

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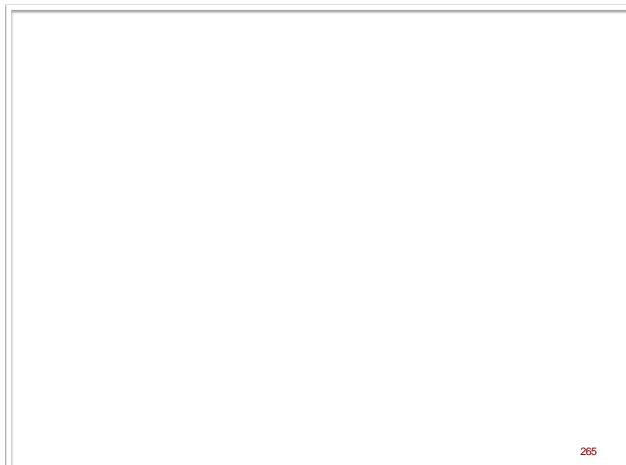
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Prevention and Remediation of Retaliation

- ! Retaliation is an increasingly common legal claim arising from charges of discrimination.
- ! The Title IX regulations prohibit colleges and universities from “intimidating, coercing or retaliating against” individuals because they engaged in activities protected by Title IX.

Prevention and Remediation of Retaliation

- ! Title IX coordinators should ensure that the institution effectively communicates a message about protection against retaliation and that reportin naroes ndso ndedeoegde



Investigating Retaliation Claims: Rebutting the Inference

! What is the stated non-

Section 504 Disabilities Compliance Oversight

- ! The Section 504 regulations require that colleges:
 - ! “Designate at least one person to coordinate its effort (4)-5C2m B



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Common Remedies for Students

* Not an Exhaustive List

- " Providing an escort.
- " Ensuring that the reporting party and responding party do not attend the same classes.
- " Relocating to a different residence hall.
- " Providing counseling services.
- " Providing medical services.
- " Offering academic support services, such as tutoring.
- " Arranging transportation accommodations.
- " Arranging for the reporting party to re-take a course/withdraw from a class without penalty.
- " Reviewing any disciplinary actions taken against the reporting party to see if there is a causal connection between the harassment and the misconduct and adverse action.
- " Providing campuswide training and education initiatives.

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Common Remedies for Employees

* Not an Exhaustive List

- " Providing no-contact orders/contact restrictions.
- " Providing an escort.
- " Arranging transportation accommodations.
- " Providing referral to counseling services, medical services, and mental health services.
- " Adjusting work schedules, work assignments, supervisory responsibilities, etc.
- " Offering leave with pay.
- " Providing suspension with pay (accused).
- " Work.
- " Sanctions.

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Assurance of Compliance with Requirements to Stop, Prevent, Remedy

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- ! Identify patterns and systemic problems.
- ! Issue campuswide policy statements, informational campaigns, and other messages that harassment and assault will not be tolerated.
- ! Provide regular training on sexual misconduct for students and employees.
- ! Conduct periodic surveys of campus climate.
- ! Establish a system for monitoring future incidents and patterns.
- ! Provide technical assistance to campus law enforcement on Title IX compliance.

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ASSURANCE OF COMPLIANCE WITH FINAL SANCTIONS

- ! Sanctioning In Sexual Misconduct Cases
- ! Considerations
- ! Common Sanctions
- ! What Sanctions?

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Sanctioning in Sexual Misconduct Cases

- ! Title IX and case law requires:
 - ! Bringing an end to the discriminatory conduct.
 - ! Taking steps reasonably calculated to prevent the future reoccurrence of the discriminatory conduct
 - ! Restoring the victim as best you can -23 ()TJ 0.0077b5 (Se)57

Common Student Sanctions

- ! Warning.
- ! Probation.
- ! Loss of privileges.
- ! Counseling.
- ! No contact.
- ! Residence hall relocation, suspension, or expulsion.
- ! Limited access to campus.
- ! Service hours.
- ! Online education.
- ! Parental notification.
- ! Alcohol and drug assessment And counseling.
- ! Discretionary sanctions.
- ! College suspension.
- ! College expulsion.

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Common Employee Sanctions

- ! Warning (verbal or written).
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What Sanctions?

- ! Responding student is found responsible for non-consensual intercourse involving a student-victim who the panel determines was incapacitated and whose incapacity should have been known to the accused.
- ! The panel felt that part of the problem was the student's inexperience with sexual matters and poor communication.
- ! The responding party is an excellent student and is well liked by the campus community.
- ! The victim also indicates that she does not want him to get suspended or expelled.

What Sanctions?

- ! A male tenured faculty member is found responsible for non-consensual intercourse involving a female student who is not in any of the faculty member's classes.
- ! The investigator determines that the student was incapacitated and the accused faculty member should have known of that incapacity.
- ! The faculty member is a full professor holding a prestigious endowed chair position.
- !

Q&A AND WRAP -UP



QUESTIONS?

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STUDENT AFFAIRS eNEWS

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