UNITED STATES DEPARTMENT OF EDUCATION Office for Civil Rights

January 15, 2021

Part 1: Questions and Answers Regarding the Department's Title IX Regulations

The Department of Education (Department) Office for Civil Rights (OCR), through its Outreach, Prevention, Education and Notice rimination (OPEN) Center, issues the following technical

| for that proposition. | Additionally, at 30068, t | he Depa rtitræ cknowledge | es that guidance documents |
|-----------------------|---------------------------|----------------------------------|----------------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | 2 | |

With respect to a respondent's claim that a recipient's grievance process was inequitable, the redpient's legal obligation is to comply with 34 C.F.R. §§ 106.44, 106.45cassiductsa grievance process. Where a recipient's supportive measures unreasonably burden a respondent, those supportive measures would not meet the definition of a "supportive measure. F.R. § 106.30 The recipient must follow the grievance process specified in 34 C.F.R. § 106.45 before taking an action that is not a supportive measure, unless the emergency removal provision in 34 C.F.R. § 106.44(d)eappl

Program or Activity

Question 4: May a recipient use the procedures outlined in 34 C.F.R. § 106.45 of the Title IX regulations even in cases where an incident of sexual harassment occurs outside of the recipient's education program or activity of thus does not trigger the recipient'stir02 (he)4 (h2 (e)4 (m)-2)2sL

that affects that parent or guardian's student, the school must notify the parent or guardian of the Title IX matter.

Employees

Question 7: Do therequirement in the Title IX regulation apply to allegations between employees of a recipien?

Answer 7: Yes. The Title IX regulations, in 34 C.F.R. § 106.30(a) define "complainant" and "respondent" respectively as "an individual who is alleged to be the victim" and "an individual who has been reported to be the perpetration." Aerson may be a complainant or respondent, regardless of whether the person is a student, employee, or otherwise affiliated with the university.

Similarly, the regulation sequire a university to respond promptly when the university has actual knowledge of sexual harassment in the university's education program or activity against a person in the United States, and that response must treat the complainant and respondent equitably by offering supportive measures to the complainant and refraining from imposing disciplinary sanctions on the respondent without following a grievance process that complies with 34 C.F.R. § 1396.45. (C.F.R.§ 106.44(a)). Thus, the regulation sover sexual harassment allegations in cases where complainant and respondent are both employees.

At 30439 of the Peamble to the regulations, the Department explains:

The Department appreciates support for li>BDC -0.002 Tc 6g -verlespw6 (o)-4 I.11 0

determination regardingesp

FERPA and Confidentiality

Question 10: The Title IX regulations make the release of a responsibilitative confidential unless the FERPA exceptions apply ERPA permits but does not require the consensual disclosure of records by postsecondary educational institutions in connection with disciplinary proceedings concerning crimes of violence or notorcible sex offenses. Crimes of violence and from ble sex offenses do not include all forms sexual harassments defined in 34 C.F.R § 106.30 (a) pes that mean that recipients cannot reveal the identity of a respondent found responsible for sexual harassment, including in response to a reference check, because it would be retaliatory this elease confidential information assuming there is no state law requiring this information to be revealed?

Answer 10: In the Preamble to the regulations 3042627 (emphasis added), the Department addresses the intersection of FERPA and thegulations' requirement in 34 C.F.R. § 106.45(b)(5)(vi).

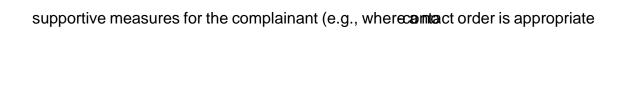
The Title IX regulations 34 C.F.R.§ 106.71(a), state the general rule that a recipient must keep confidential the identity of any person who has reported sexual harassment, or who has been reported to be a perpetrator of sexual harassment. The purpose of this provision is to prevent the school from retaliating against anyone. This duty of confidentiality has three exceptions in 34 C.F.R. § 106.71(a): if disclosure is permitted under FERPA disclosure is required by lawr if disclosure is necessary to carry out the purposes of Title IX and its regulations, including to conduct a grievance process.

A recipient's disclosure of the identity of a respondent cannot be made with a retaliatory purpose without violating34 C.F.R. § 106.71f the disclosure is made by a recipient without falling into one of the three exceptionssted in 34 C.F.R. § 106.71, OCR majew the disclosure as potentially retaliatory and examine the facts and circumstances to determine whether the disclosure either (i) satisfied one of the three exceptions (for example, the disclosure was necessary to carry out the purposes of the Title IX regulations (ii) was made for a nemetaliatory purpose.

Question 11: How can a recipient address a complainant's request for confidentiality, including in instances where a Title IX Coordinator sighe formal complainanting an investigation into a complainant's sexual harassment allegations?

Answer 11: The Title IXregulations balance a complainant's desire for confidentiality (in terms of, for instance, the complainant's identity not being disclosed to the respondent) with a school's discretion to pursue an investigation where factual circumstances warrant an investigation even though the complainant does not desire to file a formal complaint or participate in a grievance processIn the Reamble to the regulations 30133-30134, the Department discusses these issues at length, including the following (footnotes of the desire)

A complainant (or third party) who desires to report sexual harassment without disclosing the complainant's identity to anyone may do so, but the recipient will be unable to provide supportive measures in response to that report without knowing the complainant's identity.



Answer 14: Yes. The Title IX regulation state that with or without a hearing, questions and evidence about the complainant's sexual predisposition were relevant, and questions and evidence about a complainant's prior sexual behavior are not relevant unless such questions and evidence are offered to (1) prove that someone other than the respondent committed the conduct alleged by the complainant, of (2) if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. 3 C.F.R. 106.45(b)(i)-(ii). The same requirements apply at all educational sevel