

Commonwealth Technical Institute at Hiram G Andrews Center

Title IX Procedures

A SCHOOL'S RESPONSE TO SEXUAL HARASSMENT

Under the Department of Education's Title IX Final Rule, any of the following conduct on the basis of sex constitutes sexual harassment:

- A school employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct (often called "quid pro quo" harassment);
- 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 school's education program or activity; or
- Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)). U.S. Department of Education Title IX Final Rule Overview.

Consistent with Supreme Court precedent and the text of Title IX, HGAC must respond when:

- (1) the school has actual knowledge of sexual harassment;
- (2) that occurred within the school's education program or activity;
- (3) against a person in the United States. The Final Rule expands "actual knowledge" to include notice to any secondary school employee, and states that any person (e.g., the alleged victim or any third party) may report to a Title IX Coordinator in person or by e-mail, phone, or mail.

A school violates Title IX when its response to sexual harassment is clearly unreasonable in light of the known circumstances, and mandatory response obligations such as offering supportive measures to every complainant, with or without a formal complaint.

HGAC must investigate every formal complaint (which may be filed by a complainant or by the Title IX Coordinator). If the alleged conduct does not fall under Title IX, then HGAC may address the allegations under the HGAC's code of conduct and provide supportive measures.

HGAC must make all materials used to train Title IX personnel publicly available on the school's website or, if the school does not maintain a website, make these materials available upon request for inspection by members of the public.

HGAC must document and keep records of all sexual harassment reports and investigations.

FILING A COMPLAINT

1. Complaint is filed with Title IX Coordinator or other HGAC staff.
2. Title IX Coordinator promptly contacts complainant confidentially to discuss the availability of supportive measures and options regarding the incident. Complainant's wishes are considered with respect to supportive measures and options:
 - a. request no action;
 - b. informal resolution; or
 - c. formal investigation.

Commonwealth Technical Institute at Hiram G Andrews Center

Title IX Procedures

3. The Final Rule requires a school to investigate sexual harassment allegations in any formal complaint, which can be filed by complainant, or signed by a Title IX Coordinator. Complainant's wishes should be respected unless the Title IX coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of known circumstances.
4. If the allegations in a formal complaint do not meet the definition of sexual harassment or did not occur in HGAC's education program or activity, HGAC must dismiss such allegations but may still address the allegations in any manner the school deems appropriate under HGAC's own code of conduct.

A FAIR GRIEVANCE PROCESS

HGAC is required to investigate and adjudicate formal complaints of sexual harassment using a grievance process that incorporates due process principles, treats all parties fairly, and reaches reliable responsibility determinations. HGAC's grievance process must:

1. give both parties written notice of the allegations, an equal opportunity to select an advisor of the party's choice (who may be, but does not need to be, an attorney), and an equal opportunity to submit and review evidence throughout the investigation;
2. use trained Title IX personnel (Title IX Coordinator, Investigators, decision-makers, and facilitators of informal resolution process) to objectively evaluate all relevant evidence without prejudgment of the facts at issue and free from conflicts of interest or bias for or against either party;
3. protect parties' privacy by requiring a party's written consent before using the party's medical, psychological, or similar treatment records during a grievance process;
4. obtain the parties' voluntary, written consent before using any kind of "informal resolution" process, such as mediation or restorative justice, and not use an informal process where an employee allegedly sexually harassed a student;
5. apply a presumption that the respondent is not responsible during the grievance process (often called a "presumption of innocence"), so that the school bears the burden of proof and the standard of evidence is applied correctly;
6. use and state whether the school has chosen either the preponderance of the evidence standard or the clear and convincing evidence standard (and use the same standard for formal complaints against students as for formal complaints against employees);
7. reasonably prompt time frames with delays only in good cause for collaboration with police or necessary hearing accommodations;
8. grievance process must describe range of possible remedies; possible outcomes/remedies include: interim measures before final outcome, remedial measures after the final outcome and making the complainant aware of available resources upon finding of a prohibited sexual offense, campus-wide remedies may be adopted such as review or revision of the Center's sexual offense policies, increased monitoring/security and increased education and prevention efforts.
9. ensure the decision-maker is not the same person as the investigator or the Title IX Coordinator (i.e., no "single investigator models");
10. for postsecondary institutions, hold a live hearing and allow cross-examination by party advisors (never by the parties personally); and

Commonwealth Technical Institute at Hiram G Andrews Center

Title IX Procedures

11. protect all complainants from inappropriately being asked about prior sexual history (“rape shield” protections).

INVESTIGATION PROCESS

The Final Rule states that the school must investigate the allegations in any formal complaint and send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint.

During the grievance process and when investigating:

1. The burden of gathering evidence and burden of proof must remain on schools, not on the parties.
2. Schools must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
3. Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”).
4. Parties must have the same opportunity to select an advisor of the party’s choice who may be, but need not be, an attorney.
5. Schools must send written notice of any investigative interviews, meetings, or hearings.
6. Schools must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.
7. Schools must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.
8. Schools must dismiss allegations of conduct that do not meet the Final Rule’s definition of sexual harassment or did not occur in a school’s education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate.
9. Schools may, in their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
10. Schools must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.
11. Schools may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts.
12. The Final Rule protects the privacy of a party’s medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the school obtains the party’s voluntary, written consent to do so.

HEARINGS

For postsecondary institutions, the school’s grievance process must provide for a live hearing:

Commonwealth Technical Institute at Hiram G Andrews Center

Title IX Procedures

1. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging the credibility.
2. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
3. At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.
4. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant.
5. If a party does not have an advisor present at the live hearing, the school must provide an advisor of the school's choice to conduct cross examination on behalf of that party.
6. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
7. Live hearings may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually.
8. Schools must create an audio or audiovisual recording, or transcript, of any live hearing.

STANDARD OF EVIDENCE AND DETERMINATION

The Final Rule requires the school's grievance process to state whether the standard of evidence to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard. The Final Rule makes each school's grievance process consistent by requiring each school to apply the same standard of evidence for all formal complaints of sexual harassment whether the respondent is a student or an employee (including faculty member).

1. The decision-maker (who cannot be the same person as the Title IX Coordinator or the investigator) must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.
2. Send both parties a written determination simultaneously regarding responsibility explaining how and why the decisionmaker reached conclusions and how to file an appeal.
3. HGAC must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.
4. Effectively implement remedies for a complainant if a respondent is found responsible for sexual harassment.

Commonwealth Technical Institute at Hiram G Andrews Center

Title IX Procedures

5. Protect any individual, including complainants, respondents, and witnesses, from retaliation for reporting sexual harassment or participating (or refusing to participate) in any Title IX grievance process.

INFORMAL RESOLUTION

The Final Rule allows a school, in its discretion, to choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Any person who facilitates an informal resolution must be well trained. The Final Rule adds:

1. A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. Similarly, a school may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.
2. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
3. Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

SUPPORTIVE MEASURES

Schools must offer supportive measures to the person alleged to be the victim (referred to as the "complainant"). The Title IX Coordinator must promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

The supportive measures that must be offered are measures designed to: restore or preserve access to the school's education program or activity without unreasonably burdening the other party, protect the safety of all parties and the school's educational environment, and deter sexual harassment. Such measures may include 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 living quarters, leaves of absence, and increased security and monitoring of certain areas of the campus. They should be "non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge" to the complainant and, as applicable, to a respondent as well.

Supportive Measure Examples:

- agreement for no contact between parties;
- referrals support counselors internally or externally;
- change in room assignment; or
- change in classroom assignment.