

Review of Institutional Policies:
Complaint Handling, Student Codes,
and More!

MODULE FIVE

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Pieces Of One Puzzle



- Statement of Non-Discrimination
- Anti-Sexual Harassment Policy
- Student Code
- Employee Handbook
- Title IX Resources



Non-Discrimination

“The University does not discriminate on the basis of race, creed, color, religion, **sex**, sexual orientation, disability, age, marital status, national origin or Vietnam-era/disabled veteran, or on any other basis prohibited by federal or state law, in employment or in the application, admission, operation, participation, access and treatment of employees and students, in any of the University's programs and activities.”



Anti-Sexual Harassment Policy

"It is the policy of the University that no member of the community may sexually harass another. Sexual harassment is defined as unwelcome sexual conduct (including sexual assault), requests for sexual favors, and/or physical, verbal or written conduct of a sexual nature when:

(1) Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment, education, or participation in University programs or activities, or

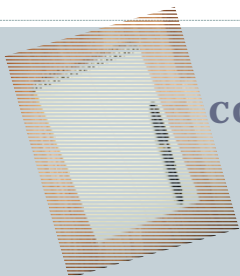
(2) Submission to or rejection of such conduct by an individual is used as a basis for decisions pertaining to an individual's employment, education, or participation in University programs or activities; or

Sexual Harassment Policy

(3) Such speech or conduct is directed against another and is abusive or humiliating and persists after the objection of the person targeted by the speech or conduct, or

(4) Such conduct would be regarded by a reasonable person as creating an intimidating, hostile or offensive environment that substantially interferes with an individual's work, education, or participation in University programs or activities."

Checklist For Policy Compliance



STUDENT COMPLAINTS

Do my institution's policies...

- (1) Provide notice of the grievance procedures, including where a complaint may be filed?
- (2) Make it clear that they apply to complaints alleging harassment by employees, other students or third parties?
- (3) Allow for adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to provide witnesses and other evidence?
- (4) Include designated and reasonably prompt time frames for the major stages of the complaint process?
- (5) Ensure that the parties receive written notice of the outcome of the complaint?
- (6) Include an assurance that we will take steps to prevent recurrence of any harassment, and to correct its discriminatory effects on the complainant and others if appropriate?



Do my institution's policies...

... make it clear that they apply to complaints alleging harassment by employees, other students or third parties?



- Manner of processing complaint may vary, but identity of harasser does not change duty to address complaint.



Location, Location, Location!

- Schools should “consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus.”
- Must process complaint regardless of where it occurred.



Do my institution's policies...

... allow for adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to provide witnesses and other evidence?



The Key to Compliance

Must have grievance procedures that allow for prompt and **equitable** resolution of complaints.



Equality In Informal Resolution

- OCR has said mediation is not appropriate for cases involving sexual assault.
- Informal resolution may still be acceptable and effective in dealing with other forms of sexual harassment.

Equality In Informal Resolution

- Informal and formal options are available, but informal processes are not appropriate for cases involving alleged sexual assault.
- If mediation is appropriate and elected, it can be ended at any time in favor of the formal process.

Equality In The Grievance Process / Hearing

- If the respondent gets a pre-hearing meeting to tell his side or to be educated on the process, the complainant should get the same.
- Respondent should not be allowed to review the complainant's statement unless the complainant gets to do the same.

Equality In The Grievance Process / Hearing

- Parties must have an equal opportunity to present relevant witnesses and other evidence.
- Parties must be afforded similar and timely access to any information to be used at the hearing (consistent with FERPA and other confidentiality issues).



Equality In The Grievance Process / Hearing

- If respondent gets to present character witnesses, so should complainant.
- The parties must have equal opportunity to select an advisor of their choice.




Equality In The Grievance Process / Hearing

- Policies should not allow the parties to question or cross-examine each other directly.
- Any “real or perceived” conflicts of interest between the fact-finders and the parties should be disclosed and addressed.




Equality In The Grievance Process / Hearing

- Fact-finders **must** use a preponderance of the evidence standard
 - Not clear and convincing and not beyond a reasonable doubt.
 - Think “more likely than not.”




Equality In The Grievance Process / Hearing

- Must maintain documentation of all proceedings, which may include findings of fact, transcripts or audio recordings.



“Documentation of Proceedings”

- a. Name and sex of the complainant or alleged victim.
- b. A description of the allegation, including dates, times, and individuals involved.
- c. The date the complaint or other report was made.
- d. The dates on which interviews were conducted.
- e. The names and sex of all known witnesses to the alleged incident.
- f. The dates on which any relevant documentary evidence was obtained.



“Documentation of Proceedings”

- g. Any written statements.
- h. The date on which the institution deferred its process to the police and then resumed its disciplinary process.
- i. The hearing outcome.
- j. The institution’s response, including any interim and permanent steps taken with respect to the complainant and the respondent; and
- k. A description of action taken to prevent recurrence of any harassing incidents.

Equality In The Grievance Process / Hearing

- OCR recommends an appeal process.
- Any appeal process must be available to both parties.

Equality In The Face Of “He Said, She Said”

- Consider:
 - level of detail and consistency of each person’s account
 - any evidence that alleged harasser has been found to have harassed others, or that accuser has made false allegations against others
 - timing of complaint as compared to alleged harassment
 - OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties (January 2001), p. 9.

Do my institution's policies...

... include designated and reasonably prompt time frames for the major stages of the complaint process?



The Key to Compliance

Must have grievance procedures that allow for **prompt** and equitable resolution of complaints.




“Designated and Reasonably Prompt Time Frames”

- Specify time frames for all major stages as well:
 - full investigation / hearing
 - response to parties regarding the outcome of the complaint
 - appeal



“Designated and Reasonably Prompt Time Frames”

- Should provide parties with periodic status updates during investigation process.




Do my institution’s policies...

... ensure that the parties receive written notice of the outcome of the complaint?



Notice Of Outcome

- Outcome = Whether Harassment Occurred.
- Must notify both parties of outcome in writing.
- Permitted to disclose sanctions “that directly relate to the complainant.”
- Notice should be provided concurrently.



Notice Of Outcome

- **Caution:** The Campus SaVE Act regulations may require that the outcome include its rationale.



Do my institution's policies...

... include an assurance that we will take steps to prevent recurrence of any harassment, and to correct its discriminatory effects on the complainant and others if appropriate?



The Complainant

- Ensure the parties aren't in the same classes.
- Move the parties to different residence halls.
- Prevent and address retaliation.
- Advise the complainant as to the option of filing a criminal complaint.
- **REMEMBER:** The obligation to provide such support to the Complainant is not dependent on a finding of "responsible" regarding, and sanctions imposed against, the Respondent.



The Complainant

- Counseling and mental health services.
- Medical services.
- Academic support services, including tutoring.
- Course withdrawal.

The Campus Community: Prevention / Remediation

- Educate, educate, educate.
- Offer counseling, health, mental health and comprehensive victim services to all students affected by sexual harassment.
- Focused training for all employees who interact with students regularly on recognizing and appropriately addressing sexual harassment.

The Campus Community: Prevention / Remediation

- Focused training for certain student groups.
- Regular meetings between the Title IX Coordinator and law enforcement and counseling services.
- Create a committee of students and school officials to identify strategies, weak spots, and red flags.
- Reissue the institution's policies.

Next Module ...

Review of Institutional Policies – Part II

- Employees
- Parents and the media
- FERPA and the Clery Act
- Minors
- Notice
- Training
