

**Title IX Final
Rule Review
and
Expert Panel
Discussion
*May 13, 2020***

Webcast Agenda – All Times Eastern

3:00 PM

- ✓ Review of notable changes for Title IX
Coordinators, Investigators and Hearing Panelists

4:00 PM

- ✓ Question & Answer with Expert Panel

4:30 PM

- ✓ Immediate Next Steps
- ✓ Messaging Advice
- ✓ Closing Remarks



Title IX Faculty Panel



Bev Baligad, J.D.

Director of Compliance/Title IX Coordinator
University of Hawaii, West O'ahu



Cara Hardin, J.D.

Title IX Deputy Coordinator
Marquette University



Jill Thomas, J.D.

Educator/Consultant



Notable Changes for Title IX Coordinators

Definition of Sexual Harassment

- "Quid Pro Quo" harassment.
- Hostile environment 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."
- "Sexual assault," "dating violence," "domestic violence," or "stalking" as those terms are defined under the Clery Act and VAWA

“Actual Knowledge”

A school MUST respond to allegations of sexual harassment when:

- 1) The school has actual knowledge of sexual harassment;
- 2) That occurred within the school’s education program or activity; and
- 3) Against a person in the United States.

Title IX Coordinator Responsibilities

- Prompt outreach to a complainant
- Coordinator of supportive measures
- File a formal complaint when not “clearly unreasonable” after complainant chooses not to
- Rules on dismissals of formal complaints
- Coordination of outreach to prospective students and employees about Title IX
- Performs Title IX jurisdictional gatekeeping function



Notable Changes for Title IX Investigators

Investigations: Generally

- New regulation requirements continue “civil rights” investigation model
- Investigator training [*§106.45(b)(1)(3)*]
- Conflict of interest and bias [*§106.45(b)(1)(iii)*]
- “Not Responsible” Presumption [*§106.45(b)(1)(iv)*]
- Supplemental Notice [*§106.45(b)(2)(ii)*]
- Discretionary dismissal [*§106.45(b)(3)(ii)*]

Investigations: Rights of Parties

- Focus is “equity” for both parties
- Advisor of choice [*§106.45(b)(3)(iv)*]
- Equal opportunity to present witnesses and offer information inculpatory and exculpatory info [*§106.45(b)(5)(ii)*]
- No gag orders on parties; ability to gather and present relevant information [*§106.45(b)(5)(iii)*]
- Legal privileges; waiver [*§106.45(b)(1)(x)*]
- Right to inspect, review, access and respond to information [*§106.45(b)(3)(vi)*]

Investigations: The Evidence

- “Relevance” will be key to evidence gathering process
- Burden of proof and gathering evidence [*§106.45(b)(5)(i)*]
- Medical records [*§106.45(b)(5)(i)*]
- No gag orders on parties or ability to gather and present relevant information [*§106.45(b)(5)(iii)*]
- Inclusion of inculpatory and exculpatory info [*§106.45(b)(5)(ii)*]

The Investigative Report [*§106.45(b)(3)(vii)*]

- Must fairly summarize relevant info
- Must be sent to both parties and advisors at least 10 days prior to scheduled hearing or time of determination regarding responsibility
- Must be in electronic format or hard copy
- Allows for both parties to review and/or provide written response



Notable Changes for Hearing Panelists

Standard of Evidence

“State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment.”

Pick between the two optional standards and stick with that one*

Apply same standard - faculty, staff, and students

Applies in Sexual Harassment (and not, e.g., research misconduct cases)

Live Hearings

Post Secondary schools must have a live hearing to reach determinations regarding responsibility for sexual harassment.

- Must never involve parties personally questioning each other, and at a party's request, the live hearing must occur with the parties in separate rooms with technology enabling participants to see and hear each other
- Allow technology platforms for virtual live hearings
- Party can participate remotely
- Personnel and decision-makers must be trained on the tech platforms

Cross-Examination

Either party has the right to undergo a live hearing and cross-examination in a separate room, and this provision deems irrelevant any questions or evidence regarding a complainant's sexual predisposition (without exception) and any questions or evidence about a complainant's sexual behavior with two exceptions).

"directly, orally, and in real time" to describe how cross-examination must be conducted

- the cross-examination must be conducted by an advisor (parties must **never personally question** each other), and if a party does not have their own advisor of choice at the live hearing, the postsecondary institution must provide that party (at no fee or charge) with an advisor of the recipient's choice, for the purpose of conducting cross-examination, and such a provided advisor may be, but does not need to be, an attorney.

Role of the Advisor

Requires recipients to provide all parties with the same opportunities to have advisors present in Title IX proceedings and to also have advisors participate in Title IX proceedings, subject to equal restrictions on advisors' participation, in recipients' discretion.

- allowing recipients to place restrictions on active participation by party advisors (except for cross – see previous slide)
- a party's advisor may be, but is not required to be, an attorney
- 106.45(b)(6)(i) 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 credibility.

A party cannot "fire" an assigned advisor during the hearing, but if the party correctly asserts that the assigned advisor is refusing to "conduct cross-examination on the party's behalf" then the recipient is obligated to provide the party an advisor to perform that function, whether that means counseling the assigned advisor to perform that role, or stopping the hearing to assign a different advisor

A dark blue, monochromatic background image of a study desk. It features a stack of books, a globe on a stand, and a mesh pencil holder filled with pencils. The scene is softly lit, creating a professional and academic atmosphere.

Expert Panel Discussion Question & Answer

Immediate Next Steps including Messaging to Campus Community



Summer Training Opportunities

Title IX Professional Development by Academic Impressions

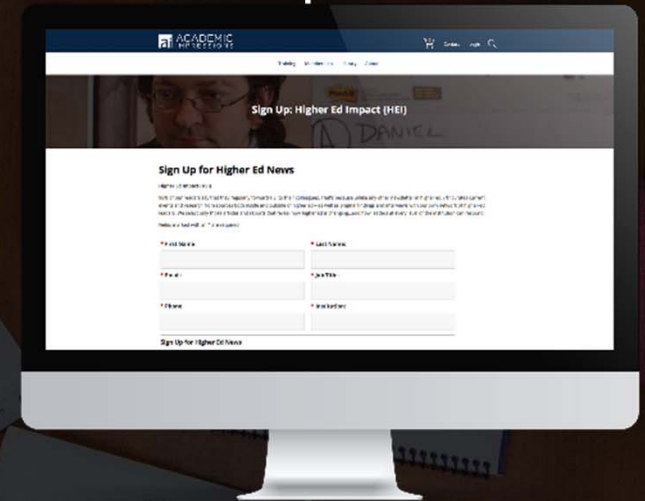
- ***Title IX Federal Regulations Summer Workshop Series***
 - June 4th – August 6th | 1:00 – 2:30 PM Eastern
- ***Foundations of Title IX Investigations: An Immersive Experience (Online Bootcamp)***
 - June 22nd – July 31st | 3-4 hours per week
- ***Advanced Title IX Investigator Training and Certification***
 - June 24th – 26th | 11:30 am – 5:00 pm Eastern

Title IX Professional Development by Academic Impressions

- ***Comprehensive Strategies for Title IX Coordinators: Institute and Certification***
 - July 27th – 29th | 11:30 am – 5:00 pm Eastern
- ***Title IX Hearing Panel Institute: Ensuring an Equitable Resolution Process for Students***
 - Dates TBD | 11:30 am – 5:00 pm Eastern

Academic Impressions Membership

- *Designed exclusively for higher ed faculty and staff*
- *Comprehensive higher ed leadership library*
- *Learner-centric*
- *Access to hundreds of best practices*
- *Focused on adoption, utilization, and impact*
- *Custom learning pathways*
- *2020 virtual conferences are included*



Fiscal Year-End Promotion

Limited time; save over 50% | Ends June 30, 2020

Thank You!

Please remember to complete the event evaluation. Your comments will help us continually improve the quality of our programs.

<https://www.surveymonkey.com/r/BT8SH5G>

