

# Gearing Up: New Title IX Regulations Highlights and Hurdles



Fall 2020

# Today's Conversation

- Setting the Table: The Title IX Timeline
- The New Regs – Highlights
- Oregon Tech's Plan
- Hurdles & Hopes
- How Can I Help?
- Discussion/Q&A



# In a Nutshell...

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

# The TIX Timeline

**1975:** Athletics regs issued. High schools & colleges are given 3 years to comply, (elementary schools 1 year).

**1980:** Dept of Educ. established & given oversight of Title IX compliance

**1988:** Civil Rights Restoration Act reverses *Grove City* decision; restores institution-wide Title IX coverage, including athletics

**2011:** Dept of Ed issues policy guidance (“2011 Dear Colleague Letter”) clarifies Title IX protections against sexual harassment and sexual violence apply to all students, including athletes

**May 8, 2020:** Dept of Educ. Issues 2000+ pages of new regulations

**June 23, 1972:** TIX Pres. Nixon into law by Sponsored by Sen. Birch Bayh & Rep. Edith Green

**1976:** NCAA challenges the legality of Title IX

**1984:** Supreme Court limits Title IX scope in *Grove City College v. Bell*, ruling Title IX only applies in areas that receive direct federal funds, which removes athletics from equation

**1994:** Equity in Athletics Disclosure Act requires co-ed institutions receiving federal funds to disclose financial and participation information about intercollegiate athletic programs

**2017:** Secretary DeVos rescinded the Obama-era guidelines which had prodded institutions to more aggressively investigate sexual assault; said: new regs to come

**Aug. 14, 2020:** Compliance with new regs required



# New Regs - Highlights

**New definition of sexual harassment**, meaning conduct on the basis of sex that satisfies one or more of the following:

- Sexual Assault (includes dating violence, domestic violence, stalking, re Clery and VAWA); or
- Quid Pro Quo; or
- Hostile work/educational environment: unwelcome conduct determined by a reasonable person to be so severe and pervasive and objectively offensive that it effectively denies a person equal access to an education program or activity (i.e., hostile environment)



# New Regs - Highlights

**New First Response:** A first response protocol now required. Specifically, if anyone reports sexual harassment through any method (including 24/7 web-based systems), the Title IX Coordinator or designee must:



- Promptly contact the **complainant** to discuss the availability of supportive measures
- Consider the complainant's wishes with respect to supportive measures
- Inform complainant of availability of **supportive measures** with or without filing a complaint
- Explain to the complainant the process for filing a formal complaint

# New Regs - Highlights

## New Supportive Measures Requirement:

- Supportive measures are 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 housing locations, etc.
- Support Measures = non-disciplinary and non-punitive



# New Regs - Highlights

## Mandatory Reporters:

- Institutions only required to take action in response to allegations of sexual harassment of which they have actual notice
- Notice = the Title IX Coordinator or another official with authority to institute corrective measures
- Certain employees are required to report allegations of sexual harassment to the Title IX Coordinator
- *Who?* New regs leaves institutions with the flexibility to decide on their mandatory reporters



# New Regs - Highlights

## New Procedural Requirements (Part 1):

- Respondent = presumption of innocence
- Schools = burden of proof
- Pick 1 burden of proof and stick with it:
  - Clear and convincing standard or
  - Preponderance standard
- No single-investigator model (i.e., the investigator may not make a decision—*recommendation, yes, decision, no*—regarding responsibility without a hearing, instead a decision-maker separate from the Title IX Coordinator or investigator must make the decision of responsibility)



# New Regs - Highlights



## New Procedural Requirements (Part 2):

- Written notice of allegations and an equal opportunity for parties and their advisors to review the evidence
- An investigation report with certain elements
- **Live** hearings in the higher education context
- Opportunity to test the credibility of parties and witnesses through cross-examination conducted by advisors (but not parties personally) at such hearings (which can be conducted either remotely or in person)
- Permit and provide advisors
- Equal opportunity for parties to appeal decisions
- Watch for COIs!

# New Regs - Highlights

## New Training Requirements

- Heavy emphasis on the importance of training. Schools must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training
- Training materials must be maintained and posted on the institution's website for seven years after they were presented



# New Regs - Highlights

## Permissive Informal Resolution Options

- May offer informal resolution of formal complaints of sexual harassment
  - Respondent still gets written notice of allegations
  - Parties receive information about informal options, both must agree
  - Written consent to participate needed
- Note: schools cannot offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student, given power differentials inherent in such circumstances



# Oregon Tech's Plan

## Actions Completed

- Title IX Compliance Task Team formed
- Interim policies adopted:
  - Interim Sexual Misconduct Policy
  - Interim Prohibited Discrimination and Discriminatory Harassment
  - Interim Reporting Misconduct and Prohibited Retaliation
- Draft “companion policies” in the works
- Quick update to webpage: <https://www.oit.edu/title-ix>
- Campus Sexual Assault Bill of Rights
- Overview of Investigation Process
- Overview of Complaint Options



# Oregon Tech's Plan

## Actions "In the Works"

- Updated training: for student, employees, advisors, hearing officers, deputy TIX coordinators, RAs...
- Procedures for Students (c/f Student Code of Conduct)
- Procedures for employees and others
- Companion policies
- Templates for emails, notices, investigative reports
- New formal complaint form
- S.O.P. for TIX Complaints/Investigations
- Hearing Guidelines
- Expanded website
- Title IX Compliance plan



## **Title IX Hurdles**

- **Time**
- **Staffing**
- **Complexity of process**
- **Hearing requirements**
- **Training needs**
- **Policy deficiencies**
- **Conflicts with state law**
- **Overlap with Title VII**
- **Confusion & uncertainty about the future of the regs**

## **Title IX Hopes**

- **Stronger policies, procedures, & templates**
- **Greater clarity & transparency – of process, expectations, & resources**
- **Better website**
- **More Deputy Title IX Coordinators**
- **Expanded training**
- **Increased awareness**

# How Can I Help?

- Good news: you don't need to be a Title IX expert!
- You do need to be able to “issue spot” *What does this mean?*
- If you are stumped with a question (as a leader, professor, or colleague), you can always punt: “I don't know the answer, but let me find out for you.”
- Contact the Title IX Coordinator (me) with questions/concerns
- Be familiar with policies, reporting options, & the [Title IX website](#) (*being updated soon!*)
- Lead by example
- When in doubt, ask!



# Discussion, Questions, & Resources



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