

Title IX - Potential Changes in Regulations

Thomas W. Pennington, General Counsel and Professor of Legal
Studies-Arkansas Tech University

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Session Outcomes

Participants will leave the session with an understanding of:

- ▶ Actions within the past year by the U.S. Department of Education with regard to Title IX;
- ▶ Reported new regulations implementing Title IX on college campuses;
- ▶ Emerging trends in administrator contracts specifically related to Title IX, and;
- ▶ Developing movement related to external party reporting requirements for sexual harassment.

September 22, 2017

- ▶ Q and A released to provide interim guidance
- ▶ Rescinded 2011 Dear Colleague letter

Interim Guidance

- ▶ Allows school to determine what level of evidence they will require to determine an assault occurred
- ▶ Obama era regs required preponderance of the evidence.
- ▶ New rules allow clear and convincing.

Interim Guidance

- ▶ Relieves the 60 day “complete the investigation” requirement.
- ▶ Allows mediation to informally resolve the matter.

New proposed regulations issued today, November 16, 2018.

- ▶ The U.S. Dept. of Education published today a “Notice of Proposed Rulemaking on Title IX.”
- ▶ These are the first comprehensive regulations issued under Title IX since 1975.
- ▶ They are subject to a 60 day notice and comment period.

Grouping the proposed amendments

1. How schools must respond to sexual harassment.
 - A. Use standards from Supreme Court decisions and other case law
 - B. Responses required in specific circumstances and accompanying safe harbors.
 - C. Emergency removal from school
 - D. The use of administrative leave
2. The grievance procedures for resolving formal complaints of sexual harassment.
 - A. Clarify that school's treatment of both complainant and respondent could constitute discrimination on the basis of sex.
 - B. General requirements for grievance procedures.
 - C. Notice to the parties.
 - D. Procedures for investigations.
 - E. Evidentiary standards for determinations of responsibility.
 - F. The content of the written determination.
 - G. The timing of providing the determination to the parties.
 - H. Procedures for appeals of written determinations.
 - I. Information resolution procedures
 - J. Record keeping procedures.

Grouping the new regulations:

3. OCR shall not require payment of money damages by the schools.

4. Address the intersection of Title IX, constitutional rights, student privacy rights, and Title VII of the Civil Rights Act of 1964.

5. Clarify the provisions governing the designation of a Title IX Coordinator.

Contract Clauses

1. Coaches

2. Academic Staff

In their
employment
contract, doing
three things.

Naming them as a “responsible employee” under Title IX, which includes:

1. Reporting requirements
2. Cooperation with Title IX investigations
3. Participation in Title IX trainings

ARTICLE III - DUTIES AND AUTHORITY

- (u) Performing the duties of a campus security authority under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and the duties of a mandatory reporter under the University's Title IX-related policies;

ARTICLE VIII - TERMINATION BY UNIVERSITY FOR CAUSE

- (g) Failure by Fulmer to cooperate reasonably with the University's efforts to prevent sexual assault, dating violence, domestic violence, and/or stalking;
- (p) Failure by Fulmer to report misconduct as required by University Rules (e.g., failure to comply with Tennessee laws regarding the mandatory reporting of child abuse and/or child sexual abuse; failure to comply with the University's Title IX-related policies including without limitation failure to satisfy the duties of a mandatory reporter/responsible employee; failure to satisfy the duties of a "campus security authority" relating to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act);
- (v) Violation by Fulmer of UTK's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation, which may be amended by the University from time to time.

New paragraph 4.1 (e) of Meyer's extension reads:

Coach shall promptly report to Ohio State's Title IX Athletics any known violations of Ohio State's Sexual Misconduct Policy (including, but not limited to, sexual harassment, sexual assault, sexual exploitation, intimate violence and stalking) that involve any student, faculty or staff or that is in connection with a university sponsored activity or event. ... For purposes of this Section 4.1 (e), a "known violation" shall mean a violation or allegation of a violation of Title IX that Coach is aware of or has reasonable cause is taking place or may have taken place.

8. **RESPONSIBLE EMPLOYEE.** Coach is considered a “Responsible Employee” pursuant to Title IX of the Education Amendments Act of 1972 (“Title IX”). As a Responsible Employee, Coach is required to inform the Title IX Officer if Coach becomes aware that a student (undergraduate, graduate, or professional) has experienced sexual violence, sexual harassment, or other behavior prohibited by University policy. Coach must contact University’s Title IX Office as soon as possible when Coach learns of an incident of sexual violence or sexual harassment and share whatever information Coach has, including the names of any individuals involved, their contact information, and any details of the incident. As a Responsible Employee, Coach must report directly to the Title IX Office, even if Coach is unsure that the incident actually occurred or unsure whether it constitutes sexual harassment or sexual violence. Coach should not investigate the report, and should not try to intervene or resolve the issue. While information must be provided to the Title IX Office, Responsible Employees should not discuss the case with other people who do not have a legitimate need to know.

National Science Foundation grants

News Release 18-082

NSF announces new measures to protect research community from harassment

New policy requires awardee institutions to report sexual harassment findings



Questions?