



**TITLE IX AND SEXUAL HARASSMENT—WHAT IT MEANS FOR CMN
Training Presented by RFR Attorney Karen L. Long¹**

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Title IX of the Education Amendments of 1972

“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.”

NOTES

Department of Education’s Long-Awaited Title IX Rules

- Released May 6, 2020
- Effective August 14, 2020
- Specifically address sexual harassment
- Establish procedural requirements from the report of possible sexual harassment through any hearing and appeal that might occur

A Look in the Rearview Mirror

- 1972 – Title IX is enacted
- 1974 – First Title IX regulations issued
- 1992 – U.S. Supreme Court recognizes student right to money damages for sexual harassment (*Franklin v. Gwinnett County Schools*)
- 1997 – OCR issues guidance on sexual harassment requiring institutions to respond
- 1998 – U. S. Supreme Court sets standards for teacher-on-student harassment liability—“deliberate indifference” after “actual notice of misconduct” (*Gebser v. Lago Vista School District*)
- 1999 – The U.S. Supreme Court releases court decision (*Davis v. Monroe County*) with a narrow definition of “sexual harassment”

Key Title IX Terms

- Actual knowledge
- Complainant – *person alleged to be the victim of conduct that could*

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constitute sexual harassment

- Emergency removal—*may be used when necessary to protect a student or other individual*
- Formal complaint
- Grievance process
- Informal resolution
- Live hearing
- Report
- Respondent – *a person who has been reported to be the perpetrator of conduct that could constitute sexual harassment*
- Sexual Harassment
- Supportive measures-nonpunitive individualized services to restore or preserve equal access to programs or services

CMN's Policy

Sex Discrimination

- Conduct directed at an individual or group
- that subjects the individual or group to treatment that adversely affects their employment or education, or institutional benefits
- on account of race or gender

Sexual Harassment

- Unwelcome conduct
- Determined by a reasonable person
- To be so severe, pervasive, and offensive that it effectively denies a person equal access to CMN's education program or activity

Hostile Environment—Totality of Circumstances

- Frequency
- Nature and severity
- Physically threatening
- Deliberate, repeated humiliation (based on sex)
- Effect on alleged victim's mental or emotional state
- Directed at one or more persons
- Other discriminatory conduct
- Continued / repeated verbal abuse of a sexual nature
- Speech or conduct deserving constitutional protections

Quid Pro Quo Sexual Harassment (involves person of authority over complainant)

- Unwelcome sexual advances
- Request for sexual favors
- Other verbal or physical conduct of a sexual nature
- Explicitly or implicitly, the failure to submit or rejection will result in adverse consequences

Sexual Violence

- Sexual assault
- Domestic violence
- Dating violence
- Stalking

CMN's Response to Sexual Harassment

- *When*—upon receiving “actual knowledge” of sexual harassment
- *How quickly*—promptly
- *In what manner*—one that is reasonable in light of known circumstances

Reporting Sexual Harassment

- *Who*—any person may report (victim or not)
- *When*—anytime including non-business hours
- *How*—by mail, telephone, email or any other way that gets the report to the Title IX Coordinator
- **Title IX Coordinator: Lisa Bear**
- **CMN Administration Building**
2170 Raven Circle
Okmulgee, OK 7447
Room #129
Phone: 918-549-2821
Email: cmntitleix@cmn.edu
- Mandatory reporters—all CMN employees
- Student reporters—to any CMN employee and/or the Title IX Coordinator

CMN's Response Upon Receipt of Sexual Harassment Report

1. Title IX Coordinator—promptly contacts complainant confidentially to discuss supportive measures
2. Coordinator explains the Complaint process for formal complaint
3. Coordinator explains the investigation process
4. Coordinator explains informal resolution options (where applicable)
5. Coordinator—where possible—respects wishes of complainant

CMN's Response After Formal Complaint

- Specific actions required for investigating, dismissing and determining responsibility
- Parties treated equitably
- Avoidance of conflicts of interest (investigators, decision makers)
- Respondent is presumed not responsible
- Prompt timelines
- Description of possible discipline & other remedies
- Appeal procedures
- Range of supportive measures
- No breach of privilege without personal waiver
- Written notice to parties upon receipt of written complaint
- Sufficient time to allow respondent to prepare response before first interview

Title IX Coordinator's Written Notice to Parties (Complainant & Respondent)

- Grievance process
- Information resolution process
- Allegations (must have details—names, conduct, date, location, etc.)
- Statement that respondent presumed not responsible; responsibility to be determined at conclusion of grievance
- Parties' rights to have an attorney or non-attorney advisor
- Parties' rights to inspect and review evidence
- Citation to any provision in the conduct code that prohibits knowingly making false statement

- Citation to any provision that prohibits knowingly providing false evidence
- Notice must be supplemented if new allegations opened for investigation

Investigations – What to Expect

- Investigator cannot be the decision maker
- Investigator will issue written determination:
 - Allegations
 - Procedural steps taken
 - Findings of fact
 - Application of conduct code to facts
 - Statement and rationale for result as to each allegation

Title IX Hearing

- Title IX Coordinator determines if hearing necessary
- Notice in writing to both parties if hearing to be held
 - Notice includes alleged policy violation
 - Notice to appear at hearing
 - Complainant's rights
 - Respondent's rights
 - Standard of proof – preponderance of evidence
- Hearing Officer
- Opening statements
- Each party's evidence and witnesses
- Closing statements

Hearing Outcome

1. Respondent is not responsible for sex discrimination or sexual harassment
2. Respondent is responsible for sex discrimination or sexual harassment
3. Respondent is responsible and sanctions will apply
4. Respondent is not responsible based on Title IX standards but engaged in a policy violation for which sanctions will independently be considered
5. Parties are advised of appeal rights

Sanctions for Sex Discrimination

- Restriction
- Service project
- Probation (Level I)
- Housing suspension
- Suspension
- Expulsion

Sanctions for Sexual Harassment

- Restriction
- Service project
- Behavioral change requirement
- Housing suspension
- Probation (Level II)
- Suspension
- Expulsion

Sanctions for Sexual Violence

- Expulsion w/ permanent record of the action in student record
- Criminal prosecution likely

Appeal Procedures (available to both parties)

- In writing to the President within 5 days of decision
- Appeal must cite specific reason(s) with supporting arguments
 - Hearing not conducted in conformity with procedures resulting in substantial prejudice
 - Evidence was not “sufficient” to justify decision
 - New evidence that would have substantially affected the outcome of the hearing discovered after the hearing
 - Sanction not appropriate for the violation (inherently inconsistent with CMN procedures or precedent)
- President reviews the record of hearing
 - May impose lesser sanction
 - May rescind previous sanction
 - May return a recommended sanction to hearing decision maker for review or reconsideration
 - If new evidence substantially affecting outcome – may refer matter to hearing decision maker for rehearing of specific

- President's final decision sent in writing to both parties

CAMPUSES ARE SAFER WHEN BYSTANDERS INTERVENE

***Know My Name* by Chanel Miller**

Emily Doe – victim of Stanford University varsity swimmer convicted of sexually assaulting her behind a dumpster when she was unconscious; 2 bystanders intervened

Bystanders Play Critical Roles

- As observers
- As interveners
- In reducing risks
 - Sexual harassment
 - Sexual assault
 - Dating violence
 - Domestic violence
 - Stalking

Bystander Intervention Essentials

- Be aware of individuals and circumstances
- Err on the side of intervention
- Be alert to signs of danger (persons or environments)
- Do not ignore odd circumstances
- Avoid defaulting to stereotypes
- Recognize the signs of sexual assault
 - Most victims know their attacker
 - Perpetrators choose targets
 - Perpetrators manage targets

Intervention Strategies

- Eyes wide open
- Have a plan
- Divert the intended victim
- Distance the perpetrator
- Delegate to a person of authority
- Direct, confront the perpetrator

NOTES

Reducing Bystander Risk

- Call campus security or law enforcement immediately
- Be loud
- Know your limitations
- Carry emergency contact information at all times