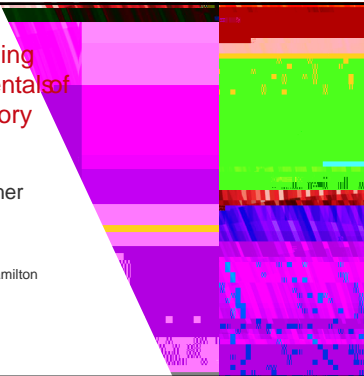


# Title IX Coordinator Training Online Course: Fundamentals of the August 2020 Regulatory Requirements

## Module 1: Jurisdiction and Other Threshold Topics

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## Course Overview

- Jurisdiction and Other Threshold Topics
- Formal Complaints, Investigations and Grievance Procedures
- Policy and Training Obligations



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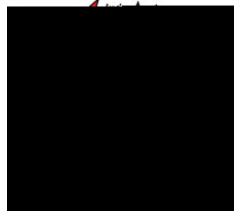
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## Title IX Final Regulation

- Effective August 14, 2020
- Where to Begin
  - Inventory
  - Implementation Plan



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PLAN





## CLERY DEFINITIONS

- Sexual Assault– a forcible or non forcible sex offense under the FBI UCR (as defined by the Clery statute)
  - Rape attempted rape, sodomy, fondling, statutory rape
- Dating Violence– violence by a person who is or has been in a romantic or intimate relationship (Clery statute)
- Domestic Violence– violence by a current or former spouse or intimate partner, co parent, living partner, youth or other under state law
- Stalking– fear for safety or safety of other or suffers substantial emotional distress

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## COMPARE

- Institution Conduct Code
- Court standards
- Title VII
- State law

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WHO?

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## IN ADDITION TO STUDENTS... APPLICABLE EMPLOYEES

§106.51 Employment

- “No person shall, on the basis of sex, be excluded from participation in, or denied benefits of, or be subjected to discrimination in employment....”
- Remains unchanged by current amendments

## TITLE VII – SEXUAL HARASSMENT DEFINITION

- Conduct
  - Unwelcome sexual advances
  - Requests for sexual favors
  - Other verbal or physical conduct of a sexual nature
- Viewed by a reasonable person in the Complainant's position

## WHEN...

- Submission becomes a term or condition of employment
- Rejection is used as the basis for an employment decision
- The conduct unreasonably interferes with work performance or creates a hostile, intimidating *or* offensive environment

## EMPLOYEE REEMPLOYMENT

- Employer's knowledge
  - Knew or should have known
- Immediate and appropriate corrective action
  - Reasonably calculated to end the harassment and prevent recurrence

## SUPERVISORABILITY

- Tangible Employment Action
  - Strict liability
- No tangible employment action
  - Employer takes reasonable care to prevent and correct promptly
  - and*
  - Employee unreasonably failed to use employer's preventive or corrective options

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## INSTITUTIONAL REQUIREMENTS

- Contractual Obligations
  - Collective bargaining agreements
  - Employee handbooks
  - Individual employee contracts



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## OTHER LEGAL REQUIREMENTS

- Conflicting state requirements
  - State laws
  - State administrative rules and regulations
- Choice of IHE to accept federal funding

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## OTHER ISSUES

- Procedures
  - Serial or parallel
  - Clearly identify what applies to employees
- Student employees
- Clergy obligation to employees
- Notification to all employees and applicants (§106.8)

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## WHERE?

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## JURISDICTION

- No distinction between on or off campus
  - If in a location, at an event, or in circumstances that meet the definition
- Only in the United States
  - Harassment must occur against a person *in the United States*
  - Study abroad & foreign employment

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## BUT DON'T FORGET...

- May apply other institutional conduct standards and procedures
- Clery applies to students and employees regardless of location.
- Title VII applies to U.S. citizens working for U.S. corporations abroad.

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## EDUCATION PROGRAM ACTIVITY

- §106.44(a) Locations, events, or circumstances over which IHE exercises substantial control over *both* the respondent and the context in which the sexual harassment occurred
- Any building owned or controlled by a recognized student organization
- Training on the scope of the institution program or activity

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## WHEN?

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## ACTUAL KNOWLEDGE

- §106.30(a): Notice to Title IX Coordinator or *any official who has authority to institute corrective measures*
- Sexual harassment or allegations of sexual harassment
- No vicarious liability, constructive notice or “should have known”

## OFFICIAL WITH

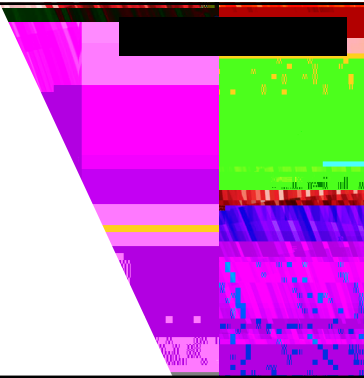
## RETALIATION §106.71(a)

- No retaliation by any person to interfere with any right “secured by Title IX”
- No retaliation for
  - Making a report or complaint
  - Participating or refusing to participate
- Filing charges regarding conduct that arises out of the “same facts or circumstances but does not involve sex discrimination”

## CONFIDENTIALITY

- IHE must keep confidential the identity of any individual
  - Who has made a report or filed a complaint
  - Who has been reported as a perpetrator
  - Who has been a witness
- Exceptions
  - FERPA
  - Legal obligations
  - Carry out a report

# HOW?



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## THE INITIAL REPORT

- Anyone may report
  - Not automatically a formal complaint
- Institution response to notice
  - Offer of supportive measures
  - Explanation of formal complaint process
  - Compare to Clery



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## MAKING REPORTS

- Who
  - Any individual
    - alleged to be the victim of conduct that could be sexual harassment
  - Distinguish from Formal Complaint
- Against Whom
  - Any individual
    - Reported as perpetrator of conduct that could be sexual harassment
  - Distinguish from Formal Complaint



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## INSTITUTION RESPONSE

- Promptly contact the Complainant to discuss the availability of supportive measures
  - Consider complainant's wishes
  - Make clear available with or without formal complaint
- Explain the process for filing a formal complaint
- Treat complainants and respondents equitably
- Consider Clery obligations

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## SUPPORTIVE MEASURE §106.30(a)

- Non disciplinary non punitive individualized services
  - Impose action that are disciplinary sanction or not supportive measure only *after* a grievance process
- Appropriate, reasonably available, free to complainant or respondent
- Restore equal access without unreasonably burdening the other party
- Confidential, if possible

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## EMERGENCY REMOVAL §106.44(c)

May remove respondent from *education program or activity* if:

- Conduct an individualized safety and risk analysis,
- Determine that respondent poses an immediate [imminent] threat to the *physical* health or safety of *anyone* justifying removal,
- The threat arises from the allegations of sexual harassment, and
- Provide opportunity for respondent to challenge removal immediately thereafter.

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