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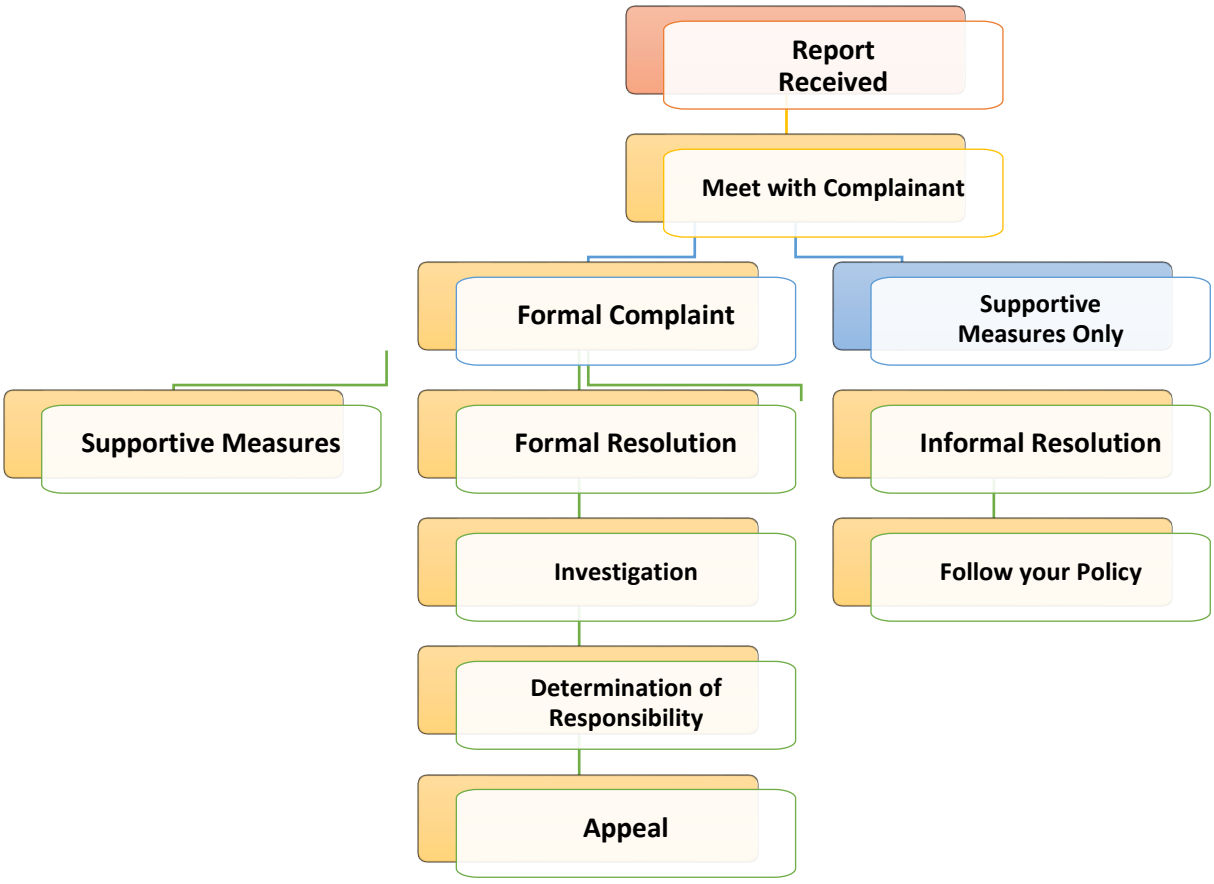
Title IX Training Webinar

June 24, 2020

New Title IX Rules: Title IX Coordinators

A Brief Overview of the Process



I. Identification of Title IX Coordinator

- Each recipient must identify at least one employee as Title IX Coordinator
    - Comments note that it's a big job and recipients may choose to designate more than one. *By way of example only:*
        - Coordinator and one or more deputy coordinators;
        - Separate coordinators for complaints involving employees and complaints involving students.
- Must be referred to as "Title IX Coordinator"
- Must notify applicants, employees, students, parents/guardians, and officially recognized unions/professional organization of:
    - Name or title
    - Address
    - Email address
    - Telephone number
- Name/title and contact information must be prominently displayed:
    - On recipient's website and
    - In each handbook or catalogue made available to applicants, employees, students, parents/guardians, and any recognized employee union/professional organization.
- Title IX Coordinator:
    - Must not have a conflict of interest;
    - Must not have a bias for or against complainants or respondents generally or a specific individual;
    - Need not be a stand-alone position, but should have adequate time to devote to Coordinator responsibilities
    - Must have required training
- Title IX Coordinator must have training in:
    - Definitions of sexual harassment
    - Scope of recipient's education program or activity
    - How to conduct a grievance process
    - How to serve impartially, including

- Avoiding prejudgment of facts
- Bias
- Conflicts of interest

II. Coordinator Role in Reporting

- Any person may report sex discrimination, including sexual harassment, to the Title IX Coordinator, regardless of whether the person reporting is alleged to be the target of the conduct
    - Issues to consider:
        - Third party reports
        - Unwilling complainants
        - Anonymous reporting
- Reports may be made at any time (including during non-business hours) by telephone, email, or mail.
- Formal complaints may be filed with the Coordinator in person, by email, by mail, or by any other method designed by the recipient
    - E.g., online reporting system
    - Formal complaint = any "document filed by a complainant"
        - Can encourage but not require use of designated form or online reporting portal
    - Physically or electronically signed by complainant
    - Title IX Coordinator may sign a complaint but does not become the complainant or a party to the complaint

III. Supportive Measures

- Non-disciplinary, non-punitive individualized services
- Offered as appropriate, reasonably available, and without fee or charge to complainant or respondent
- Before or after filing of formal complaint, or where no formal complaint has been filed

- Designed to restore or preserve equal access to educational program or activity
- Title IX Coordinator must promptly contact complainant to:
    - Discuss availability of supportive measures;
    - Consider complainant's wishes with respect to SMs;
    - Inform the complainant of the availability of SMs with or without filing a formal complaint, and
    - Explain the process for filing a formal complaint.
- Title IX Coordinator is responsible for overseeing the implementation of supportive measures for the recipient
    - Coordinate with other employees on a need-to-know basis;
        - Check in with parties regarding provision and effectiveness of SMs.

IV. Formal Grievance Process

- Title IX Coordinator oversees and serves as an informational resource during a formal grievance.
    - Shall **not** serve as decision-maker or appeal decision-maker;
- Once formal complaint is filed, either:
    - Formal grievance process with investigation and determination of responsibility, or
    - If available under recipient's policy, complainant may opt for informal resolution:
        - Parties must provide voluntary, written consent;
        - Broad discretion in developing informal process.
- **Dismissal:** Title IX Coordinator must ensure dismissal of formal complaint where:
    - Conduct alleged does not constitute sexual harassment;
    - Did not occur in recipient's program or activity; or
    - Did not occur in U.S.
- **Dismissal:** Title IX Coordinator should also evaluate grounds for permissive dismissals:

- Where complainant notifies Coordinator in writing that they wish to withdraw formal complaint or any allegations therein;
- Where Respondent is no longer enrolled or employed by recipient; or
- Where specific circumstances prevent the recipient from gathering evidence to reach determination.

- Title IX Coordinator should ensure that investigators and decision-makers:
  - Receive or have required training;
  - Are unbiased and impartial;
  - Do not have a conflict of interest in the case;
  - Understand and comply with the recipient's process for investigating and resolving complaints;
  - *…and assign an alternate where needed.*
- Title IX Coordinators are responsible for effective implementation of any remedies issued by the decision-maker.

V. Bias and Impartiality

- Title IX Coordinator must be unbiased and impartial
- Bias = prejudice in favor of or against one person or group compared with another
  - Opposites of bias = fair, objective
- Title IX Coordinator is not on anyone's "side"
  - The Coordinator's main goal is overseeing a fair and impartial process;
  - The Coordinator does not have an interest in the outcome of the grievance process, but rather in ensuring that the process is followed with integrity and the rights of the parties are respected.
- Conflicts of interest
  - A conflict of interest exists when the Coordinator, Investigator, or Decision-Maker has a personal or professional interest in a case that prevents them from discharging their duties in a fair, neutral, and impartial manner
  - Conflicts of interest may arise due to Coordinator, Investigator, or Decision-Maker's relationship to a party or witness;

  - One of the above individuals has a stake in the outcome of the process (e.g., personnel evaluations based on increasing or reducing number of founded complaints);
  - Other circumstances that negatively affect the individual's neutrality.
- The comments quote Justice Ruth Bader Ginsburg, saying that with respect to the balance between sex equality and due process, "it's not one or the other. It's both."
- Must avoid the intentional or unintentional injection of sex-based biases and stereotypes into Title IX proceedings.
- Examples of bias:
  - Assuming that complainants or respondents generally are more likely to tell the truth
  - Assuming that respondents are presumptively responsible for alleged sexual misconduct
  - Assuming that a victim was "asking for it" based on what they wore, how much they had to drink, how they were dancing, etc…
- An unbiased process:
  - Gives parties equal opportunities for participation at every stage;
  - Presumes innocence until a determination regarding responsibility is made;
  - Results in a determination made based on an objective review of all relevant, available evidence
- An unbiased process provides both parties with equivalent rights to:
  - Written notices and documents;
  - Access to recipient's resources;
  - Introduce witnesses and evidence;
  - Review and respond to the other party's evidence;
  - Participate in grievance procedures; and
  - An objective determination based on all facts.

VI. Other Responsibilities

- Title IX Coordinator should review or be involved in the review of any policies relating to recipient's Title IX obligations:
    - This may include ensuring consistency between non-Title IX policies and handbook provisions
        - Student conduct and discipline
        - Employee conduct and discipline
        - Master contracts
        - Other grievance procedures
- Title IX Coordinator should coordinate a training program to ensure adequate training of all stakeholders:
    - Investigators;
    - Decision-makers;
    - "Appropriate persons"
        - K-12: **all** employees
        - Higher Ed: Coordinator and any official with authority to institute corrective measures
- Training must include:
    - The definition of sexual harassment in § 106.30;
    - The scope of the recipient's education program or activity
    - How to conduct an investigation and grievance process (including hearings, appeals, and informal resolution processes, as applicable);
    - How to serve impartially (including avoiding prejudgment, bias, and conflicts of interest)
- Additional training for decision-makers:
    - ✓ Training on technology to be used at live hearing (if applicable);
    - ✓ Issues of relevance;
    - ✓ Questions of evidence (including relevance of questions about complainant's sexual predisposition or prior sexual behavior)

- Additional training for investigators:
  - ✓ Training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
  - ✓ VI. Other Responsibilities
- Training materials
  - Must not rely on sex stereotypes
  - Must promote impartial investigations and adjudications of formal complaints
- Recipients are required to publish all training materials on their websites, or if they don't maintain a website, make them available for public inspection upon request.
- Recordkeeping requirements:

1) Each sexual harassment investigation, including determinations, audio or visual recordings, disciplinary sanctions, and any remedies provided to the complainant;
2) Any appeal and the result therefrom;
3) Informal resolution, if any; and
4) All materials used to train Coordinators, Investigators, those who facilitate informal resolution, and decision-makers with regard to sexual harassment

Must be maintained for **7 years.**

- Recordkeeping requirements:

1) Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.
2) Document the basis for its conclusion that its response was not deliberately indifferent,
3) Document that it has taken measures designed to restore or preserve access to the recipient's educational program or activity.
4) If no supportive measures are given to the complainant, or if complainant's requested supportive measures are rejected, document why it was not clearly unreasonable to do so.

Must be created and maintained for 7 years.