REFRESHER TRAINING ON TITLE IX REGULATIONS

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Rebecca Leitman Veidlinger

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Meet your trainer



Rebecca Leitman Veidlinger is an attorney specializing in Title IX and the institutional response to complaints of gender-based discrimination, sexual harassment, and sexual violence. Rebecca has conducted and supervised hundreds of Title IX investigations, and she regularly serves as a Title IX hearing officer and appeals officer for institutions across the country.

Rebecca teaches and trains on school-related sexual misconduct nationwide. She has served as an adjunct professor at the University of Michigan Law School, teaching a seminar on Title IX, and she frequently provides sexual misconduct prevention and response training to higher education administrators, Title IX implementers, and K-12 personnel. Rebecca is the external co-chair of the University of Michigan's Coordinated Community Response Team, a group that examines the University's prevention and response efforts, identifies areas for growth, and makes policy recommendations to the University's leadership.

Before entering private practice, Rebecca worked at the University of Michigan as a Title IX investigator. She also served as Michigan State University's interim deputy Title IX coordinator, overseeing MSU's creation of a free-standing civil rights investigation unit in 2015. Rebecca is the former sex crimes prosecutor in Monroe County, Indiana (home of Indiana University), where she prosecuted hundreds of cases of domestic and sexual violence involving children and adults.

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Today we will cover:

- Scope and jurisdiction of Title IX regulations
- Understanding the institution's mandatory response
- Formal complaints and mandatory and discretionary dismissals
- Roles in the process, and how to serve impartially, without bias, and without conflicts of interest
- Informal resolution
- Title IX investigations
- Title IX hearings
- Appeals

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Current Legal Framework

Title IX of the 1972 Education Amendments

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.

2020 Title IX Regulations



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Title IX since we were last together

- West Virginia v. B.P.J.
- “Recodification of Title IX Regulations”
- Replacement of Fondling with Criminal Sexual Contact

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Definition of Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

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Mandatory jurisdiction to respond

- Actual knowledge
- Sexual harassment
- Education program or activity
- Person in the United States



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Respond promptly in a manner that is not deliberately indifferent

- Promptly contact complainant to discuss availability of supportive measures regardless of whether complaint is filed and explain process for filing complaint
- Supportive measures for complainants
- Supportive measures for respondents (when the time is right)
- Keep records of supportive measures for seven years

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Emergency removal of student

- Not a determination of responsibility
- Must conduct an individualized safety and risk analysis
- For immediate threats to anyone's physical health or safety
- Respondent must have an opportunity to challenge the decision immediately following the removal
- Whether or not grievance process is underway

Administrative leave of employee

- May place employee respondent on administrative leave during the pendency of a grievance process that complies with Title IX regulations



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Mandatory jurisdiction to investigate Formal complaint filed by a complainant

- What is a formal complaint?
- How to file it/where is it?
- What does it need to say?



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Mandatory jurisdiction to investigate Formal complaint filed by Title IX coordinator

Under what circumstances do you think a Title IX Coordinator might choose to file a complaint?



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Formal complaint is filed . . . what now? NOTICE LETTER

- Grievance process
- Allegations, including sufficient details
- Statement of presumption of non-responsibility
- Right to an advisor/attorney
- Right to inspect evidence
- Any provision in code that prohibits making false statements during process



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Dismissing complaints

MANDATORY

- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

DISCRETIONARY

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info

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Q AND A

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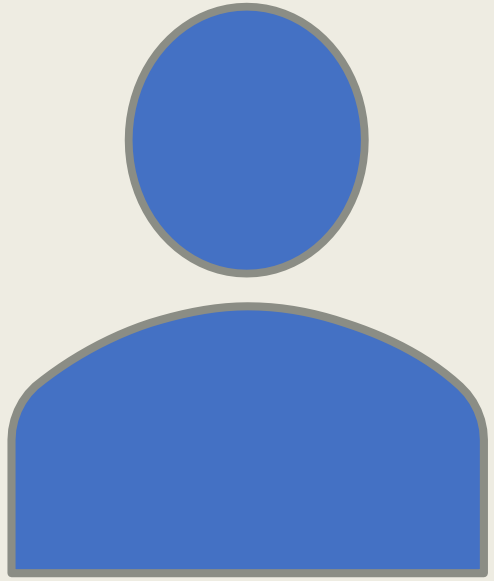
Stretch Break



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Title IX Roles

- Title IX Coordinator
- Facilitator of informal resolution
- Investigator
- Decisionmaker
- Appeals officer
- Party advisor



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How to serve impartially

- Avoid pre-judgment of the facts
- Conflict of interest
- Bias

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What does it mean to be unbiased?

- Don’t have a bias for or against complainants or respondents generally
- Don’t have a bias for or against an individual complainant or respondent
- Treat parties equally/equitably with respect to supportive measures, meetings, investigations, hearings

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Deeper dive into bias

- Bias is not an action; it occurs in a person's head
- What is implicit bias?
- Different kinds of bias



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Informal resolution

- Can only be offered after formal complaint has been filed
- May include arbitration, mediation, restorative justice, or other means
- Facilitators must be trained in informal resolution
- May not be offered in cases involving allegations that an employee sexually harassed a student

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Title IX investigation

Trained investigator collects information

Investigator shares evidence “directly related” to allegations with parties

Parties have 10 days to respond

Investigator creates summary of “relevant” evidence (investigation report) and shares with parties

Parties have 10 days to respond prior to hearing

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Understanding relevance

Relevance IS

- Tends to make a fact more or less probable than it would be without that evidence
- Logical connection between the evidence and facts at issue
- Assists in coming to the conclusion – it is “of consequence”



Relevance IS NOT

- Strength of the evidence
- Believability of the evidence
- Based on type of evidence: circumstantial v. direct
- Based on complicated rules of court



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HEARINGS

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Pre-hearing work

- Confirm advisors for each party; appoint if necessary; consider having back-ups available
- Figure out who will be requested to attend
- Explain to the parties what to expect
- Establish rules of decorum and structure of hearing
- Consider convening a pre-hearing conference
- Make logistical and technology decisions (including recording, having info available for parties, and remote access)

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Special categories of evidence that are off-limits

- IRRELEVANT:Complainant's prior sexual predisposition or prior sexual history (with two exceptions)
- IRRELEVANT: Information protected under a legally-recognized privilege
- CAN'T USE: Medical, psychological and similar records without written consent of party

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Hearing decision and written determination

- Use disciplined, unbiased evaluation of relevant evidence
- Include specific elements required by regulations

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Required elements in written determination

- Description of procedural steps from complaint through determination
- Findings of fact
- Conclusions regarding application of policy to facts
- Rationale for each result of each allegations
- Sanctions/remedies
- Appeal options (must permit appeal)

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Grounds for appeals

- Procedural irregularity that affected the outcome of the matter
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- Title IX coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter
- Any other grounds, as long as offered equally to both parties

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QUESTIONS?

rebecca@veidlinger.com



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