Title IX Employee Training Session

August 14, 2020
What is Title IX?

• Title IX is a federal civil rights law passed as part of the Education Amendments of 1972. This law protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. Title IX states that:

  “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.”

• Sex discrimination harassment, assault, and violence are forms of prohibited discrimination under Title IX and are expressly prohibited by the United States Sports Academy.
• On May 6, 2020, the U.S. Department of Education unveiled a Final Rule changing how colleges and universities must handle allegations of sexual misconduct, harassment, and assault under Title IX of the Education Amendments of 1972, effective as of August 14, 2020.

• Under the Final Rule, Title IX regulations recognize that sexual harassment, including sexual assault, is unlawful sex discrimination.
What the Department of Education is Saying

“We can continue to combat sexual misconduct without abandoning our core values of fairness, presumption of innocence and due process.”

~ Secretary DeVos
May 6, 2020
What Others Are Saying

“Betsy DeVos has created a double standard that is devastating for survivors of sexual harassment and assault, who are overwhelmingly women and girls. We are suing to make sure this double standard never takes effect.”

~ Ria Tabacco Mar
Director Of The ACLU’s Women’s Rights Project
A few helpful definitions from the Final Rule:

- **Responsible Party** – Academy designee(s) with the authority to take corrective action on the part of the institution and who may receive actual knowledge of a grievance or allegation.

- **Complainant** – An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

- **Respondent** – An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
Conditions for a Formal Title IX Complaint

Under the Title IX Final Rule, sexual harassment/misconduct claims must meet one of the following three conditions to qualify for a formal Title IX Complaint:

<table>
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<th>“An employee of the recipient (the Academy) conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct.”</th>
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<tbody>
<tr>
<td>➢</td>
<td>This condition is often called “quid pro quo” or “this for that” harassment. It is when favorable professional or educational treatment is conditioned on a sexual activity.</td>
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<th>#2</th>
<th>“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 school’s education program or activity.”</th>
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<td>➢</td>
<td>This condition is often called “hostile environment”.</td>
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<td>This type of sexual misconduct must be based on sex and meet all three measures: severe, pervasive, and objectively offensive.</td>
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<td>Constitutionally protected speech is protected under Title IX.</td>
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<th>“Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C Section 1092(f), and the Violence Against Women Act, 34 U.S.C. Section 12291(a)), expressly including sexual assault, dating violence, domestic violence, and stalking.”</th>
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<td>➢</td>
<td>Title IX now includes the Clery Act/VAWA definitions of dating violence, domestic violence, and stalking.</td>
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Additional Conditions for a Formal Title IX Complaint

In addition the following two conditions must also be met to qualify for a formal Title IX Complaint:

1. The conduct must occur within the context of an “Educational Program or Activity” for which the Academy exercises control over the Respondent.

2. The conduct must occur in the United States.
Failure to Meet Title IX Conditions

• Mandatory dismissal of a reported grievance is required if allegations by the complainant do not meet the Title IX conditions.

• However, dismissal does not preclude action under other Academy policies and processes as outlined in the:
  - Student Conduct Policy
  - Academy Catalogs
  - Employee Handbook
To Whom Does Title IX Apply?

Title IX applies to the following relationships:

- Student to Student
- Employee to Student
- Student to Employee
- Employee to Employee
Title IX Grievance Reporting – Who May Report?

A sexual harassment/misconduct grievance may be reported by anyone to an Academy “Responsible Party” with the authority to take corrective action on the part of the Academy. Reports may be provided through:

- The USSA.edu Website
- Email
- Telephone
- Written Notice
- In Person
Title IX Grievance Reporting – Who May Receive?

• Academy Responsible Parties who can receive actual knowledge of a grievance:
  - Title IX Coordinator
  - President & CEO
  - Provost
  - Director of Administration & Finance
  - Human Resources Coordinator
  - Registrar

• Title IX Coordinator:
  Dr. Sandra Geringer, Director of Recreational Management & Sports Studies
  TitleIX@ussa.edu, 251-626-3303 x7155
  1 Academy Drive, Daphne, AL 36526 Office #155

• What happened to “Mandatory Reporters”? 
When a Title IX grievance report is received by the Title IX Coordinator:

- The Title IX Coordinator will promptly reach out to the Complainant, or whomever submitted the report, and gather further information.

- The Complainant will be offered support measures, whether or not a Formal Complaint is filed.

- The Complainant will be offered the opportunity to submit a Formal Complaint and the grievance process will be reviewed.
Supportive Measures

• Examples of Supportive Measures include:
  - Consultation with the Department of Public Safety or local police agency
  - Rescheduling academic assignment or tests
  - Transferring to another course section
  - Mutual “No Contact Orders”

• It is the Complainant's choice to accept or not accept.

• Policy defined Supportive Measures are free of charge.
Title IX Formal Complaints

• Although anyone may report a sexual misconduct grievance, the Academy must have a signed Formal Complaint provided to the Title IX Coordinator to proceed with the grievance procedure. The Formal Complaint must be signed by the Complainant.

• Note that a Formal Complaint may be signed by the Title IX Coordinator only for limited reasons, such as an overall safety concern for the Academy community.
When a Title IX Formal Complaint is Filed

A written notice will be provided to both the Complainant and the Respondent.

The Respondent must receive notice with sufficient time to prepare for an initial meeting and the notice must state that the Respondent is presumed not responsible, may have an Advisor, and may inspect and review any evidence collected.

The Respondent will be offered Supportive Measures which are non-disciplinary in nature.

Respondent has the choice to accept Supportive Measures except for mutual “No Contact” orders or interim actions of emergency removal or administrative leave.
Title IX Grievance Procedure

Informal Resolution:

• Except for allegations that an employee harassed a student, an informal resolution process is allowed if both parties agree in writing.

• Either party may withdraw from the informal process and resume the grievance procedure.

Formal Grievance Procedure:

• If a Formal Complaint is not resolved through informal resolution, a live hearing is required.
Formal Grievance Process Roles

• **Advisor** – Both parties must be assigned an Advisor and may have an Advisor of their choosing. The Advisors will perform the cross-examination function at the live hearing stage of the process.

• **Investigator(s)** – An Academy appointed Investigator or Investigators will gather facts regarding the alleged incident described in the Formal Complaint. Both the Complainant and the Respondent may gather and present evidence to the Investigator.

• **Decision Maker(s)** – An Academy appointed Decision Maker or Decision Makers will determine the relevant evidence for the live hearing, the relevancy of questions proposed to be asked during the hearing and will ultimately determine if a Title IX policy was violated.

• **Appellate Decision Maker(s)** – The final Decision Maker(s) if an appeal is requested and allowed.
• The evidentiary stand used for The Academy Title IX Grievance Procedure is that of Clear and Convincing evidence, meaning that the evidence presented much be highly and substantially more probable to be true than not.

• All steps of the Grievance Procedure will be conducted with impartiality and the Respondent will be deemed not responsible unless proven to be responsible based on the evidentiary standard.
Major Changes from Previous Title IX Regulations

- Complainant can make the decision whether or not to file a Formal Complaint.
- Stated Presumption of “Not Responsible” & Equitable Treatment for Respondents
- No More “Single Investigator” Model
- No More “Gag Orders”
- Recorded Live Hearings
- Appeal Process
For additional information and details on the Title IX Final Rule or the Academy’s Title IX Policy, please go to the following resources:

- Title IX Policy #5716 in the Academy Administrative Manual on the Intranet.
- Title IX Training Resources in the Title IX section of the Academy website at [https://ussa.edu](https://ussa.edu).
- Department of Education Website: [https://www.ed.gov](https://www.ed.gov).
Thank You!

Questions?