

Title IX Coordinator Training Online Course

Class One: Definitions, Jurisdiction and Preliminary Matters

Amy C. Foerster, Partner, Troutman Pepper Hamilton Sanders LLP
Melinda Grier, Melinda Grier Consulting PC
Janet P. Judge, Partner, Holland & Knight LLP

Training Course Does Not Constitute Legal Advice

1

Class Overview

- Definitions
- Jurisdiction
- Formal Complaints
- Supportive Measures
- Dismissals
- Informal Resolution



2

Definitions

3

DEFINITION OF SEXUAL HARASSMENT

Sexual Harassment includes one or more of the following:

1. Quid Pro Quo
2. Hostile Environment
3. Clery Definitions

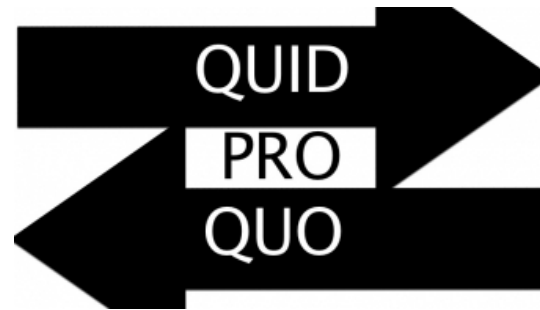
§106.30(a)



4

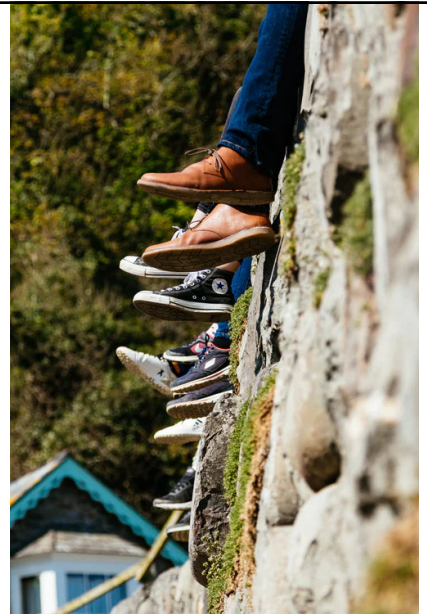
QUID PRO QUO

- Conditioning provision of an aid, benefit or service on participation in unwelcome sexual conduct
- Carried out by an employee



HOSTILE ENVIRONMENT

- Unwelcome sexual conduct
- “So severe, pervasive, *and* objectively offensive”
- “Effectively denies equal access”
- “Determined by a reasonable person”
 - “[S]tanding in the shoes of the complainant.” (Preamble, p. 514)



CLERY DEFINITIONS

- **Sexual Assault** – a forcible or non-forcible sex offense under the FBI UCRS (as defined by the Clery statute)
 - FBI UCRS/SRS definitions or NIBRS Sex Offenses definitions
 - Focus on proscribed actions rather than terms
- **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 suffer substantial emotional distress



National Association of College and University Attorneys

7

Complainant & Respondent

- Complainant – an individual who is alleged to be the victim of conduct that could be sexual harassment
- Respondent – an individual who has been reported to be the perpetrator of conduct that could be sexual harassment



National Association of College and University Attorneys

8

Actual Knowledge

- Institution has actual notice of sexual harassment or allegations when reported to the:
 - Title IX Coordinator(s)
 - Official With Authority to Take Corrective Actions (OWA)
- Not a respondent
- Not others who may or must report



Jurisdiction

Education Program or Activity



- Locations, events, or circumstances over which IHE exercises substantial control over *both* the respondent and the context in which the sexual harassment occurred, *or*
- Any building owned or controlled by a recognized student organization, *and*
- Against a person in the United States



NACUA
National Association of College and University Attorneys

11



Filing a Formal Complaint

12

Filing a Formal Complaint

- Filed by the Complainant or signed by the Title IX Coordinator.
- Requests that the IHE investigate the allegations of sexual harassment.
- In person, by mail, email or approved method with Complainant's signature.
- Complainant must be participating in or attempting to participate in the IHE's education program or activity.

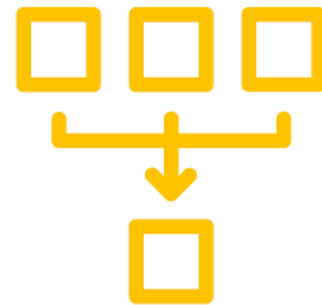


National Association of College and University Attorneys

13

The Formal Complaint: More Than One Respondent

- *May* consolidate formal complaints against more than one respondent, or by one party against the other party
 - Allegations arise out of the same facts or circumstances.
- Complaints may be filed and sanction imposed *only* against individuals, not groups



National Association of College and University Attorneys

14

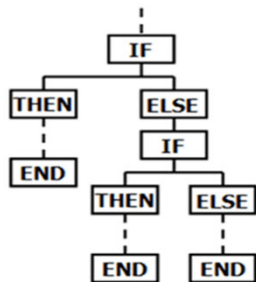
Written Notice of Allegations

- Notice of the grievance process.
- Notice of the allegations, including sufficient details and time to prepare a response *before* the initial interview.
- Statement that the respondent is presumed not responsible.
- Right to advisor of choice.
- Right to inspect and review evidence.
- Any prohibition of false statements or information.

Provide updated notice with any later discovered additional allegations.



Dismissals



Mandatory/Discretionary Dismissals

Mandatory if Conduct Alleged:

- Would not constitute sexual harassment even if proved;
- Did not occur in the IHE's education program or activity; or
- Did not occur in the United States.

Discretionary If:

- Complainant notifies the Title IX Coordinator in writing of a wish to withdraw complaint or any allegations in it;
- Respondent is no longer enrolled or employed; or
- Specific circumstances prevent sufficient gathering of evidence to reach a determination.



National Association of College and University Attorneys

17

Dismissal Results



If a formal complaint is dismissed:

- Provide written notice of dismissal and reasons to both parties.
- Provide an appeal process.
- The matter *may* proceed under another provision, policy or code.



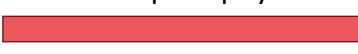

National Association of College and University Attorneys

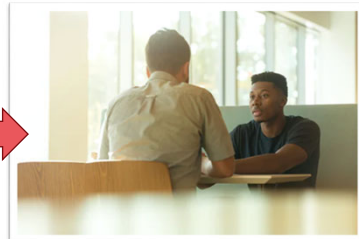
18

Supportive Measures

19

Response to a Report

- Offer *supportive measures* promptly to the Complainant. 
- Explain the process for filing a formal complaint.
- Consider the Complainant's wishes as to supportive measures. 
- Follow a grievance process that complies with the regulations *before* imposing any disciplinary sanctions or other actions that are not supportive measures against the Respondent.



20

Supportive Measures



- Non-disciplinary and non-punitive
- Treat complainant and respondent equitably
- No fee or charge to complainant or respondent
- Restore or preserve equal access without *unreasonably* burdening the other party
- Confidential to the extent possible

Informal Resolution

Informal Resolution Requirements



- Only *after* a formal complaint is filed
 - At any point in the process
 - May return to formal process if informal resolution does not resolve the matter
- All forms of sexual harassment
 - *NOT* – Allegations of employee against student harassment
 - *ONLY* – When the institution deems it appropriate
- Process is facilitated by trained individuals with no conflict of interest or bias
- Written, voluntary consent by the parties, which requires ...

Informal Resolution Process

- Parties must be given written notice of:
 - The allegations and the requirements of the informal resolution process;
 - The right to withdraw from the informal procedure at any time prior to agreeing to a resolution;
 - The circumstances precluding parties from resuming the formal complaint arising from the same allegations; and
 - Any consequences associated with informal resolution, including records that will be maintained or could be shared.



Note

The content of this presentation is to provide news and information on legal issues and all content is provided for informational purposes only and should not be considered legal advice.

The transmission of information in this presentation does not establish an attorney-client relationship with the recipient. The recipient should not act on the information contained in this presentation without first consulting retained legal counsel.

If you desire legal advice for a particular situation, you should consult an attorney.