

§106.45(b)(1)(iii) Overview
August 14, 2020



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Title IX Training



TITLE IX

(Education Amendments of 1972)

“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.”

(37 words)

Sexual Harassment

Any instance of **quid pro quo** harassment by a school's employee; any **unwelcome** conduct that a reasonable person would find **so severe, pervasive and objectively offensive** that it denies a person equal educational access; **or** any instance of³ sexual assault, dating violence, domestic violence, or stalking.

Retaliation

“No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX...because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing...”

Scope of Education Program or Activity

- Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
- Extends to any building owned or controlled by a student organization that is officially recognized by a postsecondary institution
- Must be in the United States

Investigative Process

- Parties must be treated equitably
- Preponderance of evidence standard
- Detailed notice
 - Identity of parties
 - Date and location of alleged incident
 - Alleged conduct
 - Required procedural information
- Written notice of hearings/interviews/meetings
- Sufficient time to respond

Conducting an Investigation

- Review applicable policies/code and procedures
- Identify issues/elements, witnesses, and necessary information to prove/disprove allegations
- Consider order of interviews
- Draft interview questions and prepare exhibits needed for each witness
- Be open to alternate theories/information

Interviews

- Remain fair, neutral, and professional at all times
- Utilize broad, open-ended questions
- Ask only questions designed to elicit relevant information
- Focus on questions to obtain facts that are or may be in dispute, not admitted facts
- Follow up with additional questions to obtain foundation for conclusory responses
- Avoid: leading questions, compound questions, and questions that require witness to speculate

Review of Evidence

Provide all evidence to both parties

- Include everything directly related to allegations
- Allow 10 days to review
- Allow written response
- Follow up where necessary
- Consider responses when preparing report
- Summarize facts in investigative report
- Provide report to parties 10 days prior to hearing

Relevance

- Parties must be permitted to submit all relevant evidence
- Irrelevant information:
 - Information protected by a legally-recognized privilege
 - Evidence about complainant's prior sexual history
 - Unless offered to prove that someone other than the respondent committed the conduct or
 - If related to specific incidents of the complaint's prior sexual behavior with the respondent and offered to prove consent
 - Complainant or Respondent's medical or psychological records unless voluntary written consent

Impartiality

- Be aware of personal biases
- Ensure any conflicts of interest have been addressed/eliminated
- Avoid judgment based on personal experience or subjective values or beliefs
- Stay focused on the facts
- Keep an open mind
- Do not rely on sex stereotypes or generalizations