



Advanced Issues with Title IX Compliance and Enforcement

ARC May 2021

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Agenda

- Brief OIEC and Policy Overview
- Title IX Jurisdiction
- Grievance Process
- Enforcement
- Collaboration

Office of Institutional Equity and Compliance

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Mission

The Office of Institutional Equity and Compliance is committed to preventing and eliminating discrimination or harassment based on race color, national origin, pregnancy, sex, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, or political philosophy.

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OIEC Team

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Protected Characteristics and Activities

- Age (40 or over)
- Ancestry
- Color
- Disability
- Gender Expression
- Gender Identity
- Genetic Information
- Marital Status
- National Origin
- Political Affiliation
- Pregnancy
- Race
- Religion
- Sex
- Sexual Orientation
- Veteran Status
- *Retaliation*

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Title IX

No person in the United States shall, on the basis of sex, be excluded from the participation, be denied the benefits of or be subjected to discrimination under any education program or activity receiving federal financial assistance.

Title IX of the Education Amendments of 1972 Implementing Regulations @ 20 U.S.C. § 1681 & 34 C.F.R. Part 106

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Wichita State Policies

- 3.06/ Sexual Harassment, Discrimination, and Retaliation Policy for Employees, Students and Visitors
- 3.47/ Discrimination Review Procedures for Students, Employees and Visitors*
- 3.19/ Prohibition of Retaliation
- 8.10, 8.11/ Students with Disabilities, Accessible Content
- 8.21/ Accommodations for Pregnant and Parenting Students*

* *Policy updates pending*

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Title IX Jurisdiction

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Scope of Title IX

- Sexual Harassment
 - Sexual Assault
 - Domestic Violence
 - Dating Violence
 - Stalking
- Parity/Equity in Educational Programs and Activities
- Discrimination based on sex/gender
- Pregnant and Parenting Students

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Title IX Application

- On campus
- Off campus:
 - substantially controlled by the institution
- Recognized Student Organizations
 - Property or Houses
- Otherwise in the context of an educational program/activity

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Off-campus conduct

- Event or circumstance organized and administered by WSU
- Employees or agents of WSU acting in the course of their employment
- Title IX does **not** apply when the conduct was committed by people acting in private settings and not connected with WSU
- Title IX does not apply if the conduct occurred outside the U.S.
 - Study abroad?

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Jurisdiction over parties

- WSU is not required to have “disciplinary jurisdiction” over the parties to act on a report
- Focus on the **context** of the discrimination or harassment
- May affect how the case is addressed in the grievance process or through sanctions

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Status of Complainant

- Must be “participating or attempting to participate” in WSU’s educational program or activities
 - Title IX Coordinator can be a complainant in some circumstances
- Effects of graduation, resignation, termination, separation
 - Does not automatically end a Title IX process
- What if a complainant does not wish to participate?
 - Discretionary or Permissive dismissal in some cases

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Status of Respondent

- Effects of graduation, resignation, termination, separation
 - Does not automatically end a Title IX process
 - Discretionary dismissal
- What if a complainant does not wish to participate?
 - Discretionary or Permissive dismissal in some cases

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Which Policies apply?

- Pre-regulation conduct
 - August 14, 2020
- Conduct that occurs in more than one educational institution
 - Which institution has jurisdiction?
 - Which institution's policies apply?
 - Can be both

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Formal Grievance Process

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After a Report is Made

- Title IX Coordinator or other OIEC team member reaches out to the affected student or employee (Complainant)
 - Resources, options, information, supportive measures and the opportunity to meet with the Title IX Coordinator or designee
 - Option to file a formal complaint initiating the Formal Grievance Process (different from the initial report)
 - The complainant may request supportive measures without filing a formal complaint

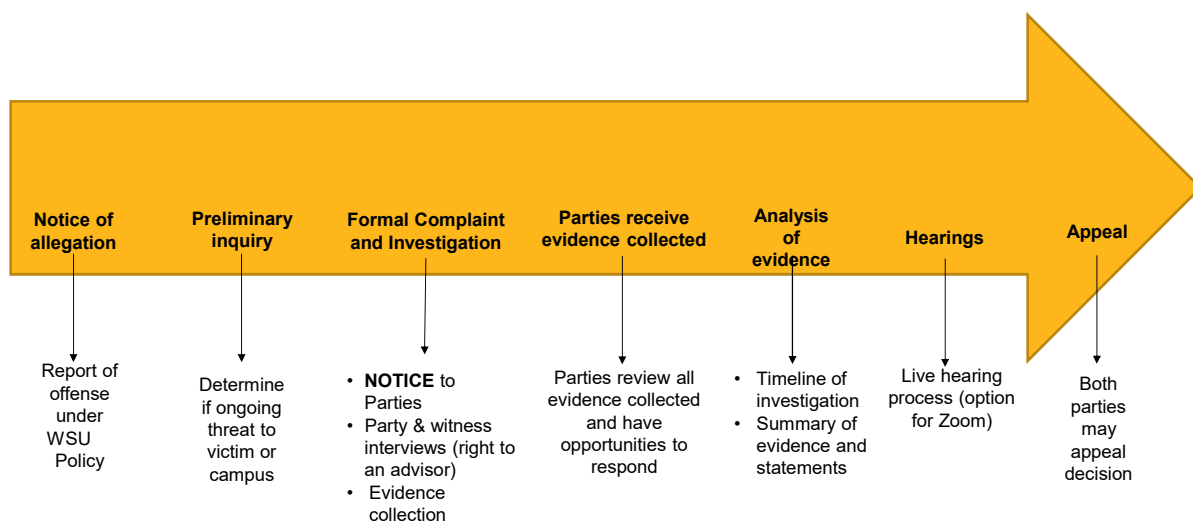
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Actual Knowledge

- Report must be made to an Official with Authority (OWA)
 - Title IX Coordinator
 - Executive Director, OIEC
 - Equal Opportunity Coordinator
- Triggers duty to respond
- Importance of Mandated Reporters

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WSU's Formal Grievance Process



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Preliminary Inquiry

- Meet with Complainant
 - Review options, supportive measures
 - Determine what the complainant wishes to do
- Does the university have jurisdiction?
- Is this a Title IX case?
 - Refer to other office or resources if not
- Formal Complaint

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Notice and Rights of the Parties

- Notice of the Formal Grievance Process in compliance with sec. 106.45(b)(2) of the 2020 Title IX Regulations
 - Notice of Investigation and Allegations (NOIA)
 - Sent to both parties
- Both parties are afforded the right to have an Advisor accompany them throughout the entire process
- Both parties are afforded the same access to a fair, neutral, objective and unbiased process
- Informal Resolution Process in most cases

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Responsibilities of the University

- Promptness
- Burden of proof and the burden of gathering information/evidence sufficient to reach a determination of responsibility rests with the university and **not** on the parties
- Presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made by a preponderance of the evidence standard at the conclusion of the Formal Grievance Process

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Investigation

- Interview parties and witnesses
- Investigator reviews and compiles evidence
- Parties review and respond to evidence
 - 10 day review period
- Investigator drafts Initial Investigative Report
 - Timeline of the process and investigation
 - Witness and evidence list
 - Summary of facts
 - Summaries of party and witness statements

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Investigation, cont.

- Parties review Initial Investigative Report
 - 10 day review period
 - Final Investigative Report issues
- Investigative report does not contain
 - Analysis
 - credibility determinations
 - Conclusions
 - recommendations

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Live Hearings

- Virtual
- Hearing Panel
 - Hearing Chair
 - Two additional hearing officers
- Pre-hearing conference
- Live Hearing
 - Investigator Statements
 - Party and witness statements
 - Advisor questions for investigator, parties, and witnesses

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Post-Hearing

- Deliberations
 - Within 24 hours
- Deliberation statement
 - Each charge addressed individually
 - Finding of responsibility or not
 - Rationale for finding
- Notice of Outcome to parties

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Possible Determinations

- Preponderance of the evidence supports a finding of responsibility under the policy
- Preponderance of the evidence does not support a finding of responsibility under the policy
- There is insufficient evidence to conclude a policy violation occurred.

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Possible Sanctions

Students

- Warning
- Probation
- Suspension
- Dismissal
- Expulsion
- Withholding diploma
- Withholding degree

Employees

- Corrective counseling
- PIP
- Referral to the EAP
- Suspension w/o pay
- Suspension w/pay
- Termination

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Appeal

- Grounds for appeal
 - Procedural error
 - Bias of investigator or hearing panelists
 - New evidence that was unavailable or unknown during investigation and hearing
 - Will substantially affect the outcome
- Timeliness
 - Five (5) university business days
- Standing and grounds
 - Determined by Appeals Officer

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Enforcement

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Who oversees WSU Compliance?

- United States Dept of Education, Office of Civil Rights (OCR)
 - Complaints filed directly to OCR
 - OCR Grievance Process
- Courts
 - Lawsuits filed with local district courts
 - Case Law
 - Federal Court precedents

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New Title IX Regulations

- Released May 6, 2020
- Officially published May 19, 2020
- Sweeping changes to Title IX landscape
- Due Process considerations
- Policy updates to ensure compliance
- Did not address several parts of Title IX
 - Gender equity, same-sex programs, pregnant and parenting students

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Collaboration

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Title IX Collaboration

- Title IX Committee
- Prevention Services Advisory Board
- Campus Coordinated Community Response Team (CCCRT)
 - OVW Campus Safety/SA Prevention Grant
- KBOR Title IX Work Group
- Sedgwick County CCRT

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Title IX Collaboration

- | | |
|----------------------------------|-------------------------------------|
| • University Police Department | • Human Resources |
| • Student Health/CAPS | • Athletics |
| • Student Conduct | • Housing |
| • Student Affairs | • Office of Disability Services |
| • Student Government Association | • Office of Diversity and Inclusion |
| • Academic Affairs | • Enrollment |
| • Faculty and Staff Senates | • Admissions |

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Mandated Reporters

- Formerly “Responsible Employees”
- All university employees are required to report actual or suspected harassment, discrimination or sexual misconduct to appropriate officials.
- This includes actual or suspected protected class discriminatory harassment.
- *Exception: Confidential employees do not need to report all the details but must report non-identifiable information regarding incidents disclosed to them.*

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Supportive Measures

- Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate
 - Reasonably available
 - without fee or charge to the parties
 - to restore or preserve access to the University’s education program or activity
 - including measures designed to protect the safety of all parties or the University’s educational environment, and/or deter harassment, discrimination, and/or retaliation

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Supportive Measures

- Referring to CAPS and Student Health or the Employee Assistance Program
- Referring to community-based service providers
- Altering campus housing assignment(s)
- Altering work arrangements
- Preparing safety plan
- Providing campus safety escorts
- Supporting no contact orders between the parties
- Providing academic support, extensions of deadlines, or other course/program-related adjustments
- Issuing University No Trespass Notice

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Questions?

Thank you!

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