



## TITLE IX SPECIAL TOPICS

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November 12, 2019 | Southern Oregon University

# FACULTY



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*Remember, you have no  
side other than the  
integrity of the process.  
And you represent the  
process.*

# COORDINATE OVERLAP OF VARIOUS STUDENT & EMPLOYEE GRIEVANCE PROCESSES

- Potential Processes
- Interaction Of Title IX And Title VII
- One Policy-One Process

# COORDINATOR OF THE OVERLAP OF MULTIPLE STUDENT AND EMPLOYEE GRIEVANCE PROCESSES



- Potential processes:
  - Generalized sexual harassment procedures.
  - General student grievance procedures.
  - Employee grievance procedures.
  - Faculty grievance procedures.
  - Student conduct/discipline process.
  - Employee discipline process.
  - Faculty discipline process.
  - Various Elementary, Middle and High School processes.
    - Incl. disciplinary processes for students with disabilities (i.e. “manifestation determinations”).
  - Academic appeal process.
  - Athletics department policies/processes and “team rules.”
  - Collective bargaining agreements.

# COORDINATOR OF THE OVERLAP OF MULTIPLE STUDENT AND EMPLOYEE GRIEVANCE PROCESSES

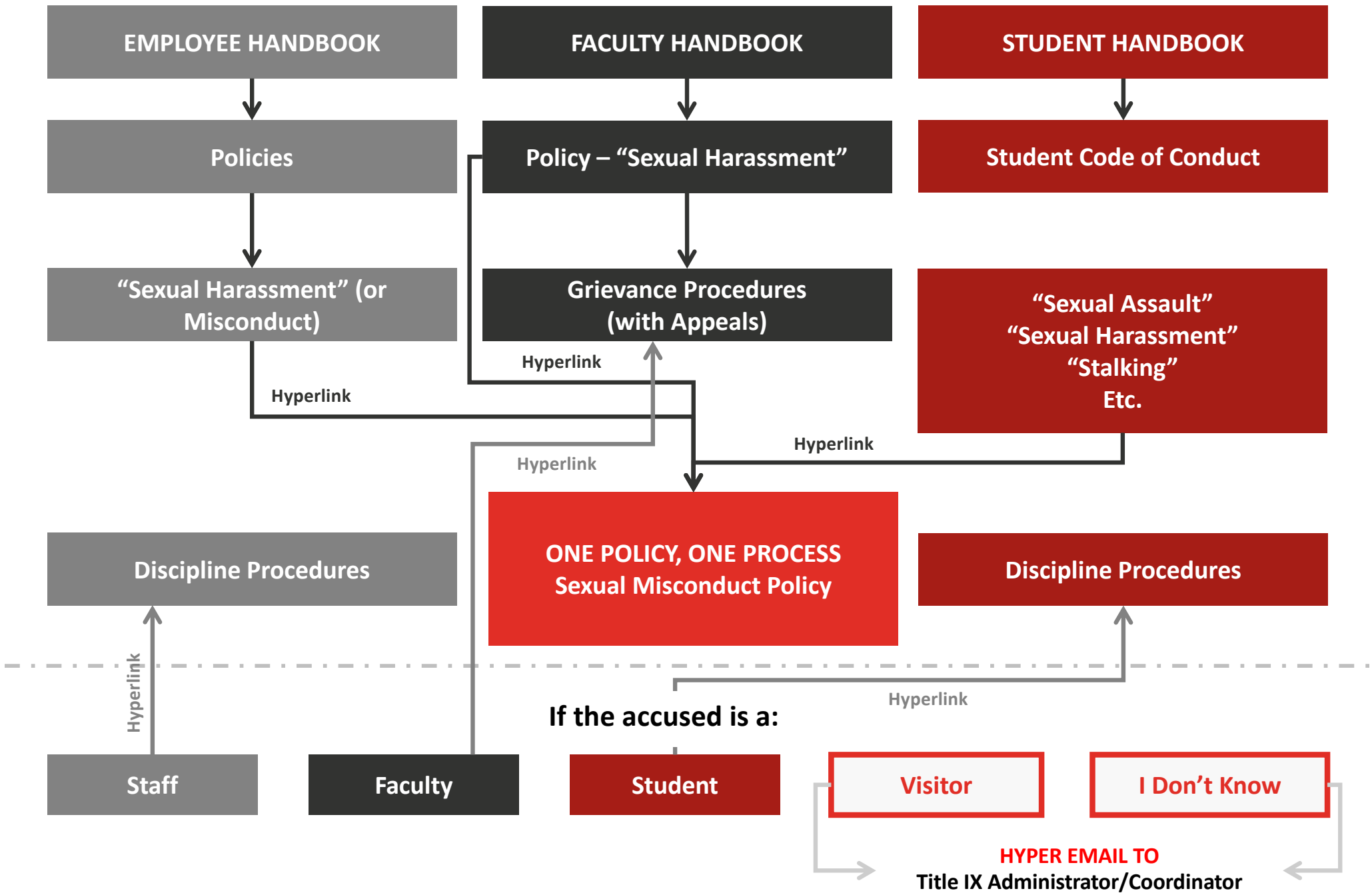


- The Title IX Coordinator:
  - Must have ability to coordinate across multiple constituency groups and procedures as necessary.
    - Institutional equity/AA/EEO officer.
    - Academic Affairs
    - Coordinator of school discipline/conduct.
    - Student Affairs administrators.
    - Athletics.

# COORDINATOR OF THE OVERLAP OF MULTIPLE STUDENT AND EMPLOYEE GRIEVANCE PROCESSES



- Supervisor of the interaction between Title IX and VII.
  - Must understand distinctions between Title IX and Title VII in responding and investigating.
  - Must be very familiar with all the processes.
  - Must have the ability to merge/combine/pick the investigatory and hearing processes and explain these to the parties.
    - E.g.: The difference between a student-employee and an employee-student.



# COORDINATOR OF THE OVERLAP OF MULTIPLE STUDENT AND EMPLOYEE GRIEVANCE PROCESSES



- One Policy, One Process: simplifying the multiple process conundrum.
  - ATIXA promotes the idea of using “One Policy, One Process” (1P,1P) to resolve all harassment and discrimination complaints (i.e. sex/gender, disability, age, race, gender, ethnicity, etc.).
    - One institution-wide policy.
    - One stand-alone resolution process.
    - Applied to all complaints involving faculty, students, and staff.

# ONE POLICY-ONE PROCESS



- A community-based policy that addresses all forms of harassment, discrimination, and sexual misconduct applicable to all members of the institution community promotes equity, minimizes confusion, and supports institutional mission.
  - Recommended by the ED and DOJ.
  - Provides easier training focus.
  - Allows for commonality in documentation and investigation.

# ONE POLICY-ONE PROCESS



- Centrally administered and overseen
  - Title IX Coordinator as IEO
- Simplifies investigations
- Collaboration across departments
- Time/manpower efficiencies
- Consistent sanctions and responsive actions
- Detection of patterns of misconduct
- New regs may create momentum

# HEARING PANEL COMPOSITION

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- *Composition*
- *Competencies*
- *Bias/Prejudice/Conflict-of-Interest*

# PANEL COMPOSITION



- Title IX Coordinator?
- Standing panel of investigators?
- Human resources or student services?
- Administrators/Staff?
- Teachers/faculty?
- Coaches?
- Outside/External Consultant?
- Legal Counsel?
- Students?

# HEARING PANEL COMPETENCIES



- The Legal Landscape
- The Conduct/Disciplinary Process
- Investigation and Resolution Procedures
- Title IX & VAWA Requirements
- Critical Thinking Skills
- How to Prepare for a Hearing
- Hearing Decorum
- Questioning Skills
- Weighing Evidence
- Analyzing Policy
- Standards of Proof
- Sexual Misconduct/ Discrimination
- SANE and Police Reports
- Intimate Partner Violence
- Bias/Prejudice/Impartiality
- The Psychology/Sociology of the Parties
- Stalking/Bullying/Harassment
- Deliberation
- Sanctioning/Remedies
- The Appeals Process
- Cultural Competency
- Intersection with Mental Health issues
- Concurrent Criminal Prosecutions
- Writing Decisions/Rationales

# THE CHALLENGE FOR HEARING PANELS



- Community standards spell out what constitutes the offense of sexual misconduct within your community.
  - The institutional response is impacted by Title IX requirements.
- It is not a question of right and wrong, or “If Something Happened”; it’s a question of “Is there a policy violation?”
- Your role is to uphold the integrity of the process.
- You may not agree with your policy, but you must be willing to uphold it.

- Among the most significant problems for hearing panels
- Bias can represent any variable that improperly influences a finding and/or sanction
- There are many forms of bias and prejudice that can impact decisions and sanctions:
  - Pre-determined outcome
  - Partisan approach by investigators in questioning, findings, or report
  - Partisan approach by hearing board members in questioning, findings, or sanction
  - Intervention by senior-level institutional officials
  - Not staying in your lane
  - Improper application of institutional procedures
  - Improper application of institutional policies

# “BIAS” DEFINED



- “Biased”
  - A tendency to believe that some people, ideas, etc., are better than others that usually results in treating some people unfairly
  - An inclination of temperament or outlook; especially a personal and sometimes unreasoned judgment (merriam-webster.com)
- “Biased”
  - To cause partiality or favoritism; influence, especially unfairly (Dictionary.com)

# “PREJUDICE” DEFINED



- To “pre-judge”
- “Prejudice”
  - Any preconceived opinion or feeling, either favorable or unfavorable (dictionary.com)
    - Often based on things we have previously read, our own experiences
- Prejudice
  - An unfair feeling of dislike for a person or group because of race, sex, religion, etc.
  - A feeling of like or dislike for someone or something especially when it is not reasonable or logical (merriam-webster.com)

# BIAS & PREJUDICE



- People do not shed their values, beliefs and life experiences at the hearing room door. Nor should we expect them to
- While bias is inevitable, it does not necessarily undermine the fairness or appropriateness of a hearing panel's decision
- The key is recognizing the bias and ensuring it does not impact one's decision because bias that serves as the basis for the outcome of the hearing is improper
- Hearings must be based on evidence, not on personal beliefs about a complaint

# BIAS & PREJUDICE: COMMON ISSUES



- Role of Alcohol
- Student Development...
- **Your own experiences...**
- Student-Athletes
- Fraternity/Sorority Life
- Disabilities & Mental Illness
- International Students
- Sex/Gender
- Gender Identity
- Race
- Ethnicity
- Nature of the Violation
- Religion or Religious beliefs
- Academic Field of Study/Major
- Veteran Status
- Socioeconomic Status
- Politics
- Attitude
- Pre-disposition towards one party

# BIAS AND CONFLICT OF INTEREST



- Conflicts of interest create bias for or against
- Types of conflicts:
  - Wearing too many hats in the process
  - Legal Counsel as decision-maker
  - Non-impartial appellate officer, hearing officer, or board
- Simply knowing a student or an employee is typically not sufficient to create a conflict of interest
- Also, having disciplined a student or employee previously is often not a conflict of interest

# SPECIALIZED ATHLETICS TRAINING



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**TITLE IX**  
40 YEARS OF CHANGE PAGE 44  
**Sports Illustrated**  
MAY 7, 2012 SIL.COM

**“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....”**

—JUNE 23, 1972

# UNDERSTANDING THE THREE FORMS OF SEXUAL HARASSMENT



Sexual Harassment is

Unwelcome conduct of a sexual nature or that is sex- or gender-based

Based on power differentials  
(*quid pro quo*)

That creates a **hostile environment**, or

When the conduct constitutes **retaliation**

# COLLEGIATE ATHLETICS AND SEXUAL VIOLENCE: SOME EXAMPLES



- Florida State University
- University of Montana
- University of Georgia
- University of Colorado
- Vanderbilt University
- Oregon State University
- Xavier University
- University of Missouri
- University of Notre Dame



# PREVALENCE OF VIOLENCE AGAINST WOMEN IN THE ATHLETIC DEPARTMENT



- Male athletes are more represented in violence against women statistics vs. their non-athlete counterparts.
- Male student athletes = 3.3% of student population
  - 19% of sexual violence
  - 35% of domestic violence

- The Executive Committee expects NCAA members to...**operate fairly and ethically**, and further to assure that student-athletes are neither advantaged nor disadvantaged by special treatment and that institutions' athletics departments must:
  - Comply with campus authorities and ensure that all athletics staff, coaches, administrators and student-athletes maintain a hostile-free environment for **all student-athletes** regardless of gender or sexual orientation;
  - **Know and follow campus protocol** for reporting incidents of sexual violence;
  - **Report immediately any suspected sexual violence to appropriate campus offices for investigation and adjudication;**

# NCAA & SEXUAL VIOLENCE



- ...institutions' athletics departments must:
  - **Educate all** student-athletes, coaches and staff about sexual violence prevention, intervention and response;
  - Assure compliance with all federal and applicable state regulations related to **sexual violence prevention and response**; and
  - **Cooperate with but not manage, direct, control, or interfere with** college or university investigations into allegations of sexual violence ensuring that investigations involving student-athletes and athletics department staff are managed in the same manner as all other students and staff on campus.

Source: NCAA Executive Committee: August 8, 2014

# RESPONSIBLE EMPLOYEE



- A **Responsible Employee** includes any employee who:
  1. Has the authority to take action to redress the harassment; **or**
  2. Has the duty to report harassment or other types of misconduct to appropriate officials; **or**
  3. Someone a student could reasonably believe has this authority or responsibility.

**Institutions must ensure that employees are trained regarding their obligation to report harassment to appropriate administrators.**

# RESPONSIBLE EMPLOYEE



- Formal, written, signed complaint
- When the Title IX Coordinator deems an investigation is warranted
- Rumors, gossip, social media, etc. can be notice
  - Investigating on these bases is discretionary (but often recommended), particularly in light of the Proposed Regs.
- Once actual notice exists, the duty to investigate is absolute.

**Institutions must ensure that employees are trained regarding their obligation to report harassment to appropriate administrators.**

# THE CLERY ACT: CAMPUS SECURITY AUTHORITY



- Clery identifies a Campus Security Authority (CSA) as:
  - Campus police.
  - Non-police security staff responsible for monitoring campus property.
  - Individuals and offices designated by the campus security policies as those to whom crimes should be reported.
  - Officials of the institution with significant responsibility for student and campus activities.

# THE CLERY ACT: CAMPUS SECURITY AUTHORITY



- CSA Mandatory reporting:
  - All CSAs must report all alleged Clery-designated criminal incidents (primary and hate crimes) that are reported to them in their capacity as a CSA to chief campus CSA.
  - Does not include indirect notification: classroom discussions, overhearing something in the hallway, speeches (e.g.: TBTN), etc.
- CSA vs. Responsible Employee
  - “Responsible Employee” is a broader/more encompassing designation.
  - All CSAs are Responsible Employees, but not all Responsible Employees are CSAs.

# UNIQUE CHALLENGES: TITLE IX AND STUDENT ATHLETICS



- Athletic department hostile educational environment
- Insularity of teams and the athletic department
- Protectionism of teams and athletic department
- Coach-Athlete dynamic
  - Power-based
  - Trust-based
  - Recruitment
  - Performance meetings
- Coach-coach dynamic



# UNIQUE CHALLENGES: TITLE IX AND STUDENT ATHLETICS



- Male privilege
- Body image and focus on the body
- Student-athlete on student-athlete violence
- Power dynamics
- Revenue vs. non-revenue sports
- Must-win mentality



# UNIQUE CHALLENGES: TITLE IX AND STUDENT ATHLETICS



- Culture of violence and aggressive behavior in sports
- History of accepted aggressive coaching styles
- Male bonding and group loyalty
- Sexualization and subordination of women in male team sports
- Approval of sexist language and attitudes
- Perception of “groupie culture”
- Sense of celebrity
- Entitlement

# MANAGING DATING RELATIONSHIPS AMONG TEAMMATES



Frame intra-team dating as part of broader relationship management issues that can distract a team from their competitive goals, such as:

- Best friends on a team being cliquey or having a big falling out
- Two women on a team dating the same guy on a men's team
- One teammate getting dumped by her boyfriend and then he starts dating one of her teammates
- Heterosexual dating on a mixed team
- Heterosexual dating on men's and women's teams that practice together and travel to competitions together
- Same-sex teammates dating
- Conflicts between white and black teammates
- Conflicts between gay and straight teammates
- Conflicts between Christian and non-Christian teammates

Source: Pat Griffin, UM-Amherst

# MANAGING DATING RELATIONSHIPS AMONG TEAMMATES



- Develop policy that applies to all relationship management issues rather than focusing on same-sex teammates dating.
- Make policies about dating apply to all dating relationships not just same-sex dating.
- Range of possible policies on intra-team dating:
  - Prohibit intra-team dating (Not recommended)
  - Ignore intra-team dating (Not recommended)
  - Proactively set expectations for intra-team dating and other dating relationships and interpersonal conflict on the team (Recommended)

# DUE PROCESS

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- What is Due Process?
- Due Process in Procedure
- Due Process in Decision
- Due Process in the Proposed Regs

# WHAT IS DUE PROCESS?



- Due Process (public institutions):
  - Federal and state constitutional and legal protections against a state institution taking or depriving someone of education or employment.
- “Fundamental Fairness” (private institutions):
  - Contractual guarantee that to impose discipline, the institution will abide substantially by its policies and procedures.

# WHAT IS DUE PROCESS?



- Ultimately, both are the set of rights-based protections that accompany disciplinary action by an institution with respect to students, employees, or others.
  - Informed by law, history, public policy, culture etc.
- Due process in criminal and civil courts vs. due process within an institution.
- Due process analysis and protections have historically focused on the rights of the responding party.

# WHAT IS DUE PROCESS?



- Two overarching forms of due process:
  - **Due Process in Procedure:**
    - Consistent, thorough, and procedurally sound handling of allegations.
    - Institution substantially complied with its written policies and procedures.
    - Policies and procedures afford sufficient Due Process rights and protections.
  - **Due Process in Decision:**
    - Decision reached on the basis of the evidence presented.
    - Decision on finding and sanction appropriately impartial and fair.

# WHAT IS DUE PROCESS?



- **Due Process in Procedure** - A school's process should include (at a minimum):
  - Notice — of charges and of the hearing/resolution process.
  - Right to present witnesses.
  - Right to present evidence.
  - Opportunity to be heard and address the allegations and evidence.
  - Right to decision made based on substantial compliance and adherence to institutional policies and procedures.
  - Right to a hearing? (TBD)
  - Right to appeal (recommended).

# WHAT IS DUE PROCESS?



- **Due Process in Decision** - A decision must:
  - Be based on a fundamentally fair rule or policy.
  - Be made in good faith (i.e., without malice, partiality, or bias).
  - Based on the evidence presented.
  - Have a rational relationship to (be substantially based upon, and a reasonable conclusion from) the evidence.
  - Not be arbitrary or capricious.
- Sanctions must be reasonable and constitutionally permissible.

# DUE PROCESS: CURRENT ISSUES



- Due Process is at the heart of current litigation and OCR regulatory guidance. Processes are becoming increasingly complex
- Current key issues:
  - Standard of Proof
  - Detailed Notice of Allegations/Investigation
  - Hearings & Investigations
  - Cross-examination
  - Attorney involvement
  - Providing copies of report and evidence for review
  - Bias by Investigators, Hearing Officers, Appellate Officers
  - Training: Biased training; insufficient training
  - Improper influences impacting decision (E.g.: Athletics; Social Media; Power/Position)

# DUE PROCESS IN THE PROPOSED TIX REGS



- Proposed regulations place heavy emphasis on due process protections for the responding party
- New standard of proof mandates
- Notice at various investigation stages
- Collection and production of evidence for review
- Mandate for determination and sanction process
- Live hearings with cross-examination
- Schools provide advisor; must allow advisor questioning of parties/witnesses

- “Notice” is the benchmark indicating when an institution is required to stop, prevent, and remedy
- Current OCR definition of notice – “knew or should reasonably have known”
  - Incorporates both actual and constructive notice
- Proposed regulations restrict to actual notice exclusively
  - *Actual knowledge* means notice to Title IX Coordinator or any official with authority to institute corrective measures
  - *Respondeat superior* or constructive notice insufficient
  - PreK-12 teachers are “officials” – post-secondary faculty are not
  - Mere ability or obligation to report does not qualify as “official”

# NOTICE TO THE INSTITUTION



- Proposed regulations would not require a Title IX investigation unless the institution receives actual notice through a “formal complaint”:
  - Actual notice defined as:
    - The reporting party filing a formal, written, signed complaint with TIX Coordinator; or
    - The TIXC may file a formal written complaint on behalf of reporting party
      - Conflict of interest? Impartiality concern?
  - Eliminates OCR’s constructive notice standard
  - What to do if institution receives notice in some other way?
    - Industry standards

# RESPONSIBLE EMPLOYEE SHIFTING?



- Currently, a **responsible employee** includes any employee who:
  - Has the authority to take action to redress the harassment; or
  - Has the duty to report harassment or other types of misconduct to appropriate officials; or
  - Someone a student could reasonably believe has this authority or responsibility;

# RESPONSIBLE EMPLOYEES?



- Proposed regulations shift “actual notice” to:
  - Anyone who has the authority to take action to redress the harassment
  - All PreK-12 teachers when conduct is student-on-student
- This is ONLY the standard for when OCR would deem a school to be on notice; it is the floor.
- ATIXA has not changed its recommendation to require all non-confidential employees to report harassment or discrimination
- Continue to train employees on obligation to report

- Jurisdiction
  - *Davis* standard – control over the harasser and the context of the harassment
  - “occurs within its education program or activity”
- Geography should not be conflated with the Clery Act – education programs or activities can be off-campus, online
- Proposed regulations specify “harassment...against a person in the United States”
  - Unclear effect on study abroad programs or school-sponsored international trips – “nothing in the proposed regulations would prevent...”
- Open question of student/employee harassment of non-student/employee

- Current requirement to address on-campus effects of off-campus misconduct
  - Even if conduct took place outside education program or activity, schools responsible for addressing effects that manifest in the program/activity
  - Students and/or employee conduct outside program, IPV
- Leaked draft of regulations prior to publication indicated schools “are not responsible” for exclusively off-campus conduct but could be responsible for on-going on-campus /in program effects
- Published proposal eliminated this comment, presume *Davis* standard still applies – “nothing in the proposed regulations would prevent...”

# STANDARD OF PROOF

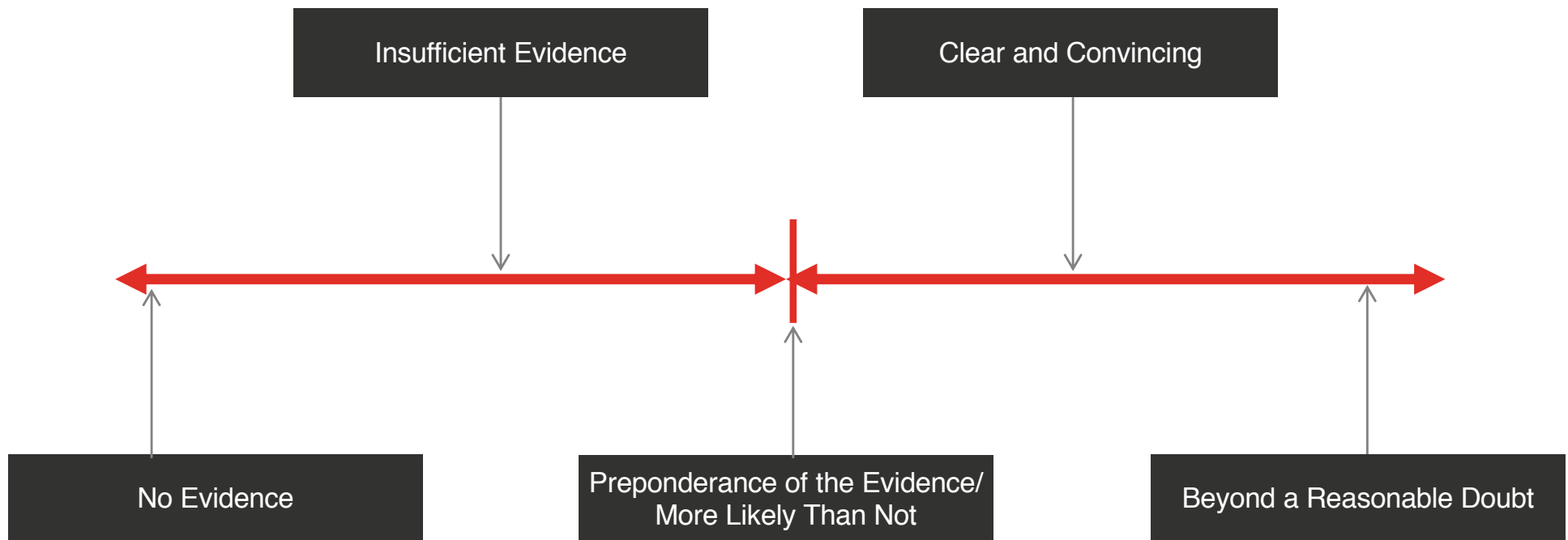


- Current OCR standard – preponderance of the evidence is standard civil court will use to evaluate school's response
- Proposed regulations allow preponderance only if same for other conduct code violations, otherwise must use clear & convincing
- Effectively mandates clear & convincing for schools with higher standards for other proceedings (i.e. AAUP faculty hearings)
- May create incongruence between school process and court scrutiny (where preponderance will still be the standard)
- ATIXA position – preponderance only equitable standard

# UNDERSTANDING EVIDENCE THRESHOLDS



## EVIDENTIARY STANDARDS



- Proposed regulations specify “prompt timeframes” written into grievance procedures
- Temporary delays only allowable for “good cause” and with written notice of the delay to parties
- OCR does not appear to contemplate reasonable delays at the earliest points of an investigation
- Responding party may not yet know of investigation or allegations
  - written notice of delay may be first indication

# WRITTEN, DETAILED NOTICE



- Proposed regulations require several written, detailed notices to the parties
  - Any reasonable delay for good cause
  - Upon receipt of a formal complaint
    - Sufficient details – identity of parties, alleged violations, date, location
    - Sufficient time to prepare a response
  - Informal process requirements, if applicable
  - All hearings, interviews, and meetings requiring attendance with sufficient time to prepare
  - Upon determination of responsibility, including sanctions
- Notice requirements may affect industry standard investigative practices
- *Doe v. Timothy P. White, et. al.*, (2018)

# INFORMAL RESOLUTION OPTIONS



- Proposed regulations allow informal resolution at any time prior to a final determination, at discretion of TIXC
  - Requires detailed notice to the parties
  - Allegations
  - Requirements of the process
  - Circumstances which would preclude formal resolution
  - Consequences of participation
  - Obtain voluntary, written consent
- Does not preclude certain offenses from informal resolution
- May restrict restorative practices after a determination

# SUPPORTIVE MEASURES



- Non-disciplinary, non-punitive individualized services
- Must not unreasonably burden other parties
- Proposed regulations address mutual restrictions, neglect unilateral or individualized restrictions
- Appears to anticipate, but also prohibit, that one party will sometimes be restricted more than the other
- May chill reporting if automatic mutual restrictions limit access to education program

# BURDEN OF PROOF ON FUNDING RECIPIENT TO GATHER EVIDENCE



- Burden of proof and burden of gathering evidence on the school, not the parties
- “Sufficient to reach a determination” = appropriately thorough?
- Unclear if all relevant evidence must be collected
- Parties may be able to request certain evidence be obtained
- Evidence collected by law enforcement is admissible
- Who determines what evidence is relevant and sufficient?

# “PRESUMPTION OF INNOCENCE”



- Proposed regulations require published grievance procedures include a presumption of innocence for the responding party
- No change from effective procedures – determination has always been based on evidence
- Presumption is a legal framework, may create inequity
- Unclear how presumption will work procedurally
- Should there be an equitable presumption that the reporting party is telling the truth?

# CONFLICT OF INTEREST, OBJECTIVITY, AND BIAS



- Existing mandate for impartial resolutions with fair procedures
- Proposed regulations prohibit conflicts-of-interest or bias with coordinators, investigators, and decision-makers against parties generally or an individual party
- Training mandates apply to PreK-12 as well as higher ed
- Unclear how prohibition of bias against reporting/responding parties establishes equity under Title IX or falls within OCR's statutory authority
- Due process mandate does not distinguish public v. private

# INVESTIGATION AND RESOLUTION MODELS



- Treatment of reporting/responding parties may constitute discrimination
- The end of the single investigator model – live hearing required for all postsecondary resolution proceedings
- Must allow advisor to be present at all meetings, interviews, hearings
- If no advisor, school must provide one
- Statutory authority exceeded with procedural mandates?

# PROVIDING PARTIES WITH COPIES OF ALL EVIDENCE



- All relevant evidence considered – inculpatory and exculpatory
- No restriction on discussing case or gathering evidence
- Equal opportunity to inspect all evidence, including evidence not used to support determination
- May chill reporting if irrelevant information must be provided to either party
- Unclear at what point in process evidence must be provided
- No limits on types/amount of evidence offered
- Creates possible equitable limits on evidence for both parties

# PROVIDING COPIES OF INVESTIGATION REPORT FOR REVIEW AND COMMENT



- Proposed regulations mandate creation of an investigation report
- Must fairly summarize all relevant evidence
- Provided to parties at least 10 days before hearing or other determination
- Parties may review and submit written responses to report
- Unclear if analysis (including credibility) and findings of fact should be included
- Unclear if a full report or a summary is required

# LIVE HEARING



- Proposed regulations mandate live hearing for postsecondary institutions, optional for PreK-12
- Parties must attend hearing, otherwise all testimony submitted by absent party must be excluded
- Hearing administrator may not be Title IX Coordinator or the investigator
- Must allow live cross-examination to be conducted exclusively by each party's advisor (separate rooms still allowed)
- Unclear how irrelevant questions will be screened, but rationale for excluding questions required (verbal or written?)

- Advisor can be anyone – no restrictions in proposed regulations
- If a party does not have an advisor to conduct cross-examination, the school must provide one
- Advisor must be “aligned with the party”
  - “Defense” and “prosecution” advisors?
- No prior training required, no mandate for school to train
- ED presumes no financial impact because all parties retain counsel; not at institutional expense
- Mandate for higher education only – PreK-12 may still conduct indirect cross-examination through hearing administrator

# APPEALS



- If schools offer appeals (not required), must be made available equitably
- All parties receive notification of any appeal
- Opportunity for all parties to support or oppose outcome
- Written decision with rationale delivered simultaneously to all parties
- Appeal decision-maker cannot have had any other role in the investigation or resolution process
- “Reasonably prompt” timeframe for producing appeal decision

# IMPACT ON EMPLOYEES



- Proposed regulations often refer exclusively to “students,” but employees are also affected
- Tenured faculty cross-examining students at a live hearing
- Faculty found responsible – sanctions affirmed by committee?
- Union employees – diminished right to an advisor because of union representation?
- Extensive due process protections for at-will employees accused of misconduct
- Potential inequity in employee processes for Title VII-based sexual harassment
  - More due process for sex discrimination than race discrimination

# OTHER ELEMENTS IN THE PROPOSED REGS



- Remedial action required by OCR for noncompliance with Title IX will not include money damages
  - OCR clarifies that reimbursements or compensation do not fall within the meaning of this provision
- Institutions may presume religious exemption
  - If under OCR investigation, may then be required to submit exemption justification in writing
  - Allows institutions to avoid public assertion of exemption from certain civil rights protections
  - Problematic for students/employees who deserve to know if certain protections are not honored at their institution

# OTHER ELEMENTS IN THE PROPOSED REGS



- Statement that proposed regulations do not restrict or deprive rights under the First, Fifth, and Fourteenth Amendments, FERPA, the Clery Act, or Title VII of the Civil Rights Act.
  - Clery/VAWA and FERPA considerations?
  - Clery Act provisions do not apply to PreK-12 – the proposed regulations extend many Clery Act requirements to PreK-12

# CONTACT INFORMATION

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