Title IX Changes and Sexual Harassment

Webinar Presenters:
Carolyn Stone, Ed.D.  Wendy D. Rock, Ph.D.
Professor  Assistant Professor
University of North Florida  Southeastern Louisiana University

October 14, 2020

Learning outcomes:

1. Discuss the current USDOE OCR interpretation of Title IX and educators’ legal responsibilities in sexual harassment

2. Use legal muscle to avoid inappropriate roles, such as investigator or mediator for complainant and respondent

3. Identify the unique role school counselors can play in implementing a legally sound framework to support complainants and respondents
What Would You Do?

Samantha is continually sexually harassed by Devin, a classmate, and confides in you begging you not to tell anyone. Is your primary obligation to protect Samantha’s confidentiality or to inform the administration?

Actual knowledge
Definition Change

**pervasive**

*adjective*

formal

/pəˈveɪ.sɪv/ **US**

Severe, pervasive, and objectively offensive

---

**Qualified Personnel**

- **Title IX Coordinator**
  - Responsible for ensuring the entity comply with Title IX
  - Must respond to complaints
  - Must contact the complainant if the report is made by someone else
  - Must immediately offer “supportive measures” to the complainant
  - May be involved with the creation of policies
  - May provide student and faculty prevention training
- **Investigator**
- **Decision Maker**
  - Cannot be investigator
  - Cannot be an employee of the Coordinator
The School Counselor’s Role and Title IX

• The school counselor as investigator ✗
• The school counselor as decision maker ✗
• The school counselor as coordinator ¿
  – Ability to counsel students effectively
  – Exploiting student trust
  – Maintaining confidentiality
  – Being non-judgmental and objective
  – Conflict of interest
• The school counselor as a supportive measure ✓

Informal Resolution Mediator

Binding
In Loco Parentis and Title IX

K-12 schools and their employees “stand in a special relationship regarding their students, captured by the legal doctrine that school districts act *in loco parentis* with respect to authority over, and responsibility for, their students.” In many instances, sexual misconduct that targets children is a criminal offense, triggering states’ mandatory reporting requirements.

Must file a formal complaint.
When May a District Dismiss a Complaint?

1. The complainant notifies the Title IX coordinator and withdraws the complaint in writing
2. The accused is no longer enrolled in or employed by the school or school district
3. When circumstances prevent the school or district from gathering sufficient evidence to determine responsibility

preponderance of the evidence or “more likely than not” standard
Due Process – Presumption of Innocence

Students and employees accused of misconduct must be presumed innocent until proven guilty. That means not only that schools bear the burden of proof in disciplinary hearings, but also that pre-hearing accommodations cannot place a heavier burden on the respondent than on the complainant.

Holding Hearings

Elementary and secondary schools are not required to hold hearings on student complaints.
Samantha was at a friend’s house for a party when Devin harassed her.
Contact Us

Carolyn Stone  Wendy Rock

cstone@unf.edu  wendy.rock@selu.edu