



Complying With The Shifting Title IX Landscape

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Agenda

- Development of a consistent SVSH framework at UC
- Impact of the new Title IX regulations
- Handling patient complaints

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UC At A Glance

- 10 campuses
- 5 medical centers
- More than 280,000 students
- More than 277,00 employees



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Recommendations of 2014 UC Task Force on SVSA

- Establish consistent response team model at all campuses
- [Adopt systemwide, standard investigation and adjudication processes](#)
- Develop comprehensive training, education and awareness plan
- Establish confidential victim advocacy office at each location
- Establish services for respondents at each location
- Establish systemwide and location websites with common elements
- Standardize data collection

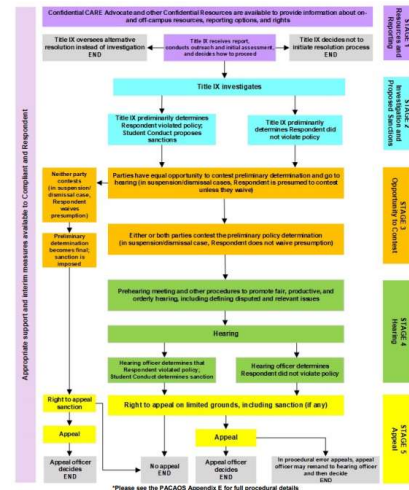
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Current Student Investigation/Adjudication Model (7/31/2019)

- Alternative Resolution OR
- Title IX investigation with preliminary policy determination
- Student Conduct proposes sanction using guidelines
- Hearing presumed = Violation + suspension or dismissal
- Request hearing = No violation OR violation + sanction < suspension or dismissal
- Appeal: unreasonable decision, procedural error, disproportionate sanction

Student Investigation and Adjudication Process Flowchart



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OCR Regulations

Notice of Proposed Rulemaking: November 2018
 Comment period closed: February 15, 2019
 More than 120,000 comments submitted

Final regulations released May 6, 2020
 Effective date August 14, 2020
 Broad application – students and employees

Links to OCR resources:

- Title IX Regulations Addressing Sexual Harassment (Unofficial Copy) [PDF](#) (6M)
- Title IX: U.S. Department of Education Title IX Final Rule Overview [PDF](#) (553K)
- Title IX: Summary of Major Provisions of the Department of Education's Title IX Final Rule [PDF](#) (675K)
- Title IX: Summary of Major Provisions of the Department of Education's Title IX Final Rule and Comparison to the NPRM [PDF](#) (706K)
- [OCR Webinar](#): Title IX Regulations Addressing Sexual Harassment (Length: 01:11:29) 05/06/2020

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OCR Regulations: Definition of Sexual Harassment

- Quid pro quo sexual harassment by an employee;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
- Sexual assault, dating violence, domestic violence or stalking as defined by the Clery Act.

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OCR Regulations: Limitation on Jurisdiction

Sexual harassment must occur:

- In the United States
- In an education program or activity of the recipient

AND

- Report must be made by a complainant participating or attempting to participate in the recipient's program

****If these requirements not met, complaint must be dismissed.**

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OCR Regulations: More about Jurisdiction

Education program or activity includes:

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

Nothing precludes addressing non-Title IX conduct under other conduct codes

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OCR Regulations: Actual Knowledge

Where recipient has actual knowledge of sexual harassment, must respond promptly and without deliberate indifference

"Actual knowledge" = notice to Title IX Coordinator or another official with authority to institute corrective measures

"The mere ability or obligation to report sexual harassment . . . does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient."

Impact on "responsible employee" designations

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OCR Regulations: Grievance Process

Two forms of possible resolution must be offered

- Informal resolution
- Formal investigation

May not commence either process without first receiving written and signed complaint

In some circumstances, Title IX Coordinator can be complainant

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OCR Regulations: Grievance Process – Informal Resolution

Written notice required

Must be voluntary and consented to in writing by both parties

Parties must have right to withdraw and resume grievance process

May not be used to address sexual harassment allegations by student against employee

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OCR Regulations: Grievance Process – Investigation

Notice to the parties must contain:

- Sufficient detail about the allegations
- Sufficient time to prepare before interview
- Reference to any code of conduct provision prohibiting knowingly making false statements or submitting false information during grievance process
- Statement that respondent is presumed to be innocent
- Right to advisor of choice
- Right to review evidence

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OCR Regulations: Grievance Process – Investigation

Burden of proof on institution

May not rely on privileged records without voluntary, written consent from party

Evidentiary review by party of all evidence, including evidence that won't be relied upon by investigator, with 10 days to submit written comments

Investigation report completed and provided to parties at least 10 days prior to hearing

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OCR Regulations: Grievance Process – Hearing

Live hearing with direct cross-examination

- Must be offered before any finding of responsibility
- Cross-examination must be oral, in real time and conducted by an advisor for the party
 - May not be conducted by a party
 - Questions must be relevant
 - Limitations on questions regarding sexual history
- University must provide advisor to a party who does not have their own advisor
- Must exclude statements of any party/witness who does not submit to cross-examination
- Hearing may be conducted in separate rooms or virtually so long as parties can see and hear each other
- Must be recorded and made available
- Impact of non-participation

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OCR Regulations: Grievance Process – Appeals

Two types of appeals must be offered

- Appeal from dismissal decision
- Appeal from hearing decision

Mandatory grounds for appeal of hearing decision

- Procedural error that affected outcome
- New evidence not available at hearing
- Bias/conflict of interest

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OCR Regulations: Grievance Process – Evidentiary Standard

Schools may choose preponderance of the evidence or clear and convincing evidence standard

Must use the same standard for all constituents

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OCR Regulations: Retaliation

Prohibits retaliation for making a report, participating in, or refusing to participate in grievance processes

May include filing code of conduct charges that arise out of the same circumstances as the initial report

Does not include:

- exercising rights protected under First Amendment or
- pursuing discipline for making a materially false statement in bad faith in the grievance process
 - but outcome of process is not determinative of bad faith

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OCR Regulations: Other requirements

Specific training requirements for Title IX staff, decision-makers

Must post training provided on web

Mandated notice to unions

Recordkeeping

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OCR Regulations: Next steps?

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Patient SVSH Complaints

UC Working Group on SVSH in Clinical Context (June 2019)

- Develop a policy on sexual misconduct in the clinical setting
- Develop model formal incident response plan
- Enhance education and training for the clinical setting
- Launch awareness campaign

<https://sexualviolence.universityofcalifornia.edu/policies/systemwide-clinical-working-group.html>

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Questions?

Thank you!

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