

The Intersection of Title IX & Disability Law: Collaborations at the Crossroads

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We ask you to join us in creating a culture that reflects...

Access and Inclusion

and

Civility and Respect

...this week and in all aspects of our organization.

Land Acknowledgment

- The Portland Metro area rests on traditional village sites of the Multnomah, Wasco, Cowlitz, Kathlamet, Clackamas, Bands of Chinook, Tualatin, Kalapuya, Molalla, and many other tribes who made their homes along the Columbia River.
- We want to recognize that Portland today is a community of many diverse Native peoples who continue to live and work here. We respectfully acknowledge and honor all Indigenous communities—past, present, future—and are grateful for their ongoing and vibrant presence.
- We also acknowledge the systemic policies of genocide, relocation, and assimilation that still impact many Indigenous/Native American families today. As settlers and guests on these lands, we respect the work of Indigenous leaders and families, and pledge to make ongoing efforts recognize their knowledge, creativity, and resilience.

Meet the Presenters

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Today's Road Map

- Overview of the proposed Title IX regulations
 - Pregnancy Accommodations
 - Supportive Measures
- Collaboration between ADA/504 Coordinators and Title IX Coordinators
- Processes for investigating and resolving Discrimination/Harassment/Title IX reports
- Collaborative proactive initiatives

Overview of Title IX and Notice of Proposed Rulemaking

No person in the United States shall, on the basis of sex, be excluded from the participation in, 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

2022 Notice of Proposed Rulemaking

- Department of Education published a Notice of Proposed Rulemaking on June 23, 2022
- Comment period closed on September 12, 2022
- Proposed new protections for pregnant and parenting students, broadens definitions of sexual harassment, and modifies policies for the process of responding to sexual harassment
- ED received over 230,000 comments
- ED announced in June that final rules will be published October 2023

Title IX Landscape Now...

- Does not define “sex”
- Requires a recipient to promptly respond in a manner that is not deliberately indifferent when it has “actual knowledge” of sexual harassment
- Requires a Complainant or Title IX Coordinator to file a Formal Complaint to initiate an investigation or informal resolution into sexual harassment
- Requires recipient to treat Complainants and Respondents equitably in its provision of supportive measures and implementation of grievance process
- Defines Sexual Harassment and Education Program and Activity in narrow manner
- Requires a grievance process that includes a live hearing with cross-examination for postsecondary institutions
- Only references disability as it relates to pregnancy and temporary disability

Title IX Landscape Possibly Later...

- NPRM defines discrimination on the basis of sex to include discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation and gender identity. See NPRM § 106.10
- NPRM re-defines Sexual Harassment to Sex-Based Harassment and modifies definitions. See NPRM § 106.2
- NPRM *still* requires Title IX Coordinator to be trained. See NPRM § 106.8(d)(2) & (4).
- NPRM requires the Title IX Coordinator to monitor the education program or activity for barriers to reporting information about conduct that may constitute sex discrimination under Title IX. See NPRM § 106.44(b).

Title IX Landscape Possibly Later...(2)

- In the Grievance Process, NPRM **allows** the decisionmaker to be the Title IX Coordinator or Investigator and **does not** require a hearing for postsecondary institutions. See NPRM § 106.45(b), 106.46.
- NPRM adds specific references to disability:
 - Defines a *Student with a disability* as “a student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B), 20(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3) See NPRM § 106.2
 - If a complainant or respondent is a postsecondary student with a disability, the Title IX Coordinator may, as appropriate, consult with the individual or office that the recipient has designated to provide support to students with disabilities to help comply with Section 504.” See NPRM § 106.8(e), 106.44(g)(7)(ii)

Pregnancy Accommodations: Current Guidance

- June 2013 *Dear Colleague Letter* and Pamphlet on *Supporting the Academic Success of Pregnant and Parenting Students under Title IX of the Education Amendments of 1972*
- October 2022 Fact Sheet: *Discrimination based on Pregnancy and Related Conditions*
 - Discrimination and exclusion
 - Medical and other benefits and services
 - Leave policy

**More to come with proposed changes to the Title IX and/or Section
Regulations???**

Pregnancy Accommodations

- Excused absences/leave
- Extended time
- Frequent breaks
- Remote participation
- Change in seating assignments
- Cannot subject to discrimination or harassment based on sex—which includes:
 - Pregnancy
 - Childbirth
 - False pregnancy
 - Termination from pregnancy or
 - Recovery therefrom

Lactation Accommodations

- Lactation is a pregnancy-related condition that must be accommodated
- Best practice to have a Pregnancy Accommodations Policy
- Under proposed Title IX rule, must provide lactation spaces that are:
 - clean
 - shielded from view
 - free from intrusion from others
 - may be used by a student for expressing milk or breastfeeding as needed
- *Where to start if you don't have a policy?*

Stanford's Pregnancy, Childbirth, Adoption, and Lactation Policy
5.9.1

Pregnancy and Lactation Accommodations: Opportunities for Collaboration

- Overlap between disability related accommodations for temporary disability and pregnancy accommodations
- Coordinate between Title IX coordinator and HR (for employees) and disability services (for students)
- NPRM proposes specific steps the Title IX Coordinator must take regarding pregnancy accommodations
 - Notifications
 - Resources
 - Processes

Supportive Measures: Current Guidance

- Available to Complainants and Respondents
- Designed to restore or preserve equal access to education, protect student and employee safety, or deter sexual harassment
- At no cost as reasonably available
- Do not require a Formal Complaint
- Like disability accommodations, if they fundamentally alter a program or lower academic standards, they are not *reasonably available* and need to consider alternatives—**BUT...**
- The documentation requirements are not as prescriptive as they may be for a student with a disability

Supportive Measures: Set the Stage for Success

- Title IX and Section 504/ADA Coordinators (and their designees) must effectively coordinate and regularly communicate
- Develop, prominently publish, and consistently implement clear processes for requesting disability accommodations and/or “Title IX accommodations”/supportive measures
- Educate community members (faculty/staff/students) on the differences between the processes—and the roles of the Title IX and 504/ADA Coordinators
- Develop a feedback loop through advocacy/ally committees, online feedback forms, surveys, etc.
- Periodically update processes as necessary and appropriate



Student Supportive Measures

All About Student Supportive Measures

1. What are supportive measures?

Supportive measures are non-disciplinary, non-punitive, individualized support services available to students who believe they may have currently (or in the past) experienced discrimination, harassment, or retaliation related to one or more protected characteristics, such as race, gender, disability, etc.

2. What is their purpose?

They are designed to address a student’s safety and well-being as well as to ensure that, despite what students may be experiencing, their continued access to University programs and activities is preserved or restored.

EEO-TIX Partnership with Keck Medicine of USC

What Are My Choices?

Student Supportive Measures

Confidential and Private Resources

Questions and Discussion

How have you observed partnerships between Equity/Title IX offices and disability services?

Collaboration between ADA/504 Coordinators and Title IX Coordinators

Demystifying the Title IX/Equity Office

- Equity/Civil Rights/Title IX offices are more than just “compliance”
 - Training
 - Proactive partnerships
 - Outreach and events
 - Policy development
 - Shared interest in ensuring compliance and more

When to Partner with Title IX/Equity Office

- Joint and shared initiatives
- Policy and procedure development and revision
- Sharing information for reports/complaints or ***BEFORE*** reports/complaints

Staffing of Title IX/Equity offices

- J.D. or lawyers
- HR experience
- Student Affairs/Office of Dean of Students experience
- No past roles that may affect neutrality/bias
- Interact with students, faculty, staff, visitors, guests, applicants, and more

Practical Tips for Collaboration

- Regular check-ins between Equity office and Disability Services Offices
- Plan joint projects/initiatives
- Develop protocols for sharing information
- Identify shared areas of concern/opportunity
- Shared events

Questions and Discussion

What examples do you have for what is working well or what could be improved regarding partnerships between Equity/Title IX offices and Disability Services offices?

Processes for Investigating and Resolving Discrimination and Title IX Reports

What is an investigation?

- Not every report results in an investigation
 - Not every reported concern is a Formal Complaint
- All parties receive notice and an opportunity to participate
- Title IX/Equity offices leverage institutional information (e.g., partner with offices for relevant information)

Differences between Investigations involving disability discrimination and Title IX misconduct

- Title IX requires a hearing
- Different processes share different levels of information
- Different offices may lead disability discrimination allegations
 - Ex. ADA Coordinator, Equity, Disability Services

Best Practices: Title IX Resolution

Title IX coordinator

- Check with Disability Services as to whether parties are registered as students with disabilities (do not include party role or details)
- Include in Notices of Investigation/Hearing, etc. a statement advising parties to request reasonable accommodations for a disability, as needed

TIX & disability services

- Both parties request disability-related accommodations
- Title IX and Disability Services consult to identify appropriate accommodations

Possible outcomes

- Written questions in advance
- Time to process before answering questions
- Presence of an emotional support animal
- **IMPORTANT NOTE:** do not have to be registered with Disability Services to receive accommodations

What is informal or alternative resolution?

- Voluntary for ALL parties
- Does not result in a finding of responsibility/policy violation (but may agree to that/discipline)
- Variety of different options – facilitated dialogue, facilitated agreement, training/education, coaching/educational response, restorative resolution, mediation, conflict resolution
 - Look to your institution's policy

Practical Tips for Collaboration

- Establish protocols for sharing information
- Obtain some information ***BEFORE*** initiating an investigation
- Consider ways to conduct joint education for informal resolutions
- Find areas for proactive outreach/education

Questions and Discussion

What collaboration is working (or not working) at your institution between the Equity/Title IX office and Disability Services office in investigations?

Collaborative Proactive Initiatives

Practical Tips for Collaboration

- Global Digital Accessibility Awareness Day
- Student Initiatives
 - Student Advisory Board
 - Student groups
- Films and events

Questions and Discussion

What are examples from your institution where the Equity office and the Disability Services Office have partnered for proactive initiatives?

Thank you for attending!

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