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NACUA Online Course
Title IX Coordinator Training

Module 3: Receiving a Report

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Submodules

- What's a report? What's our obligation with respect to reports?
- How should I reach out to a potential complainant? What should I cover in an intake meeting?
- What are supportive measures?
- When should the Title IX Coordinator initiate a complaint?

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Submodule 1

What's a report? What's our obligation with respect to reports?

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What constitutes a report?

- Notice to the institution of alleged sexual harassment in its education program or activities
  - Can be oral or in writing
  - Notice triggers a response from the institution (via the Title IX Coordinator)

Alleged by whom?
Notice to whom?

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Alleged by whom?

- Student
- Employee
- Visitor?
- Stranger?

"...participating or attempting to participate in a program or activity of the institution at the time of the alleged conduct."

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Notice to whom?

- Actual knowledge is the sole factor triggering notice and a school's response obligation.
- Actual notice = notice of sexual harassment to the TIXC or an "official with authority to institute corrective measures"
- Who at your college might qualify as an "official with authority"?

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But… Who should have reporting obligations?

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Notification That Does Not Trigger a Response Obligation

- Confidential Employees
  - Employees subject to applicable Federal or State law privilege;
  - Employees recipient has designated as confidential; or
  - Employees who conduct IRB-approved research.
- Public Awareness Events
  - Held on campus or through an on-line platform sponsored by institution;
  - Notification requirements still apply to employees, but the Title IX Coordinator's obligations would not apply

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Title IX Coordinator Response Obligations: 2020 Regs

106.44(a) - Recipient's Response to Sexual Harassment

- Treat complainant and respondent equitably by offering supportive measures
- Explain to the complainant the process for filing a complaint

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Deliberately Indifferent Response

Deliberate Indifference

- It requires a showing that the institution's response was inadequate, willfully indifferent, or clearly unreasonable, thereby causing harm or denying the complainant educational benefits.
- Lack of support
- Failure to act
- Unreasonably delayed response

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Submodule 2

How should I reach out to a potential complainant? What should I cover in an intake meeting?

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Initial Outreach: Mode

Icons depicting three modes of outreach: a telephone (phone call), an envelope with an "@" symbol (email), and a smartphone showing a text message (texting).

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Initial Outreach: Information to be Conveyed

- Who you are and your role
- Why you are reaching out
- What you want to discuss
- Link to website with information about resources?
- Will there be another outreach?
- Alternative places to seek support/resources?
- Subject line?

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Initial Outreach: Information to be Conveyed

- Who you are and your role
  - "My name is Bindu and I am the Title IX Coordinator here at the College. I am here to assist community members who may have been affected by [sexual harassment, sexual misconduct, interpersonal violence]."
- Why you are reaching out
  - "I received information from your [RA/faculty member] that you may have experienced [broad description of conduct]."
- What you want to discuss
  - "If you are interested, I welcome an opportunity to meet with you to discuss resources and reporting options to ensure that the College is a place where you feel supported."

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What if you get no response?

Situations with limited information

- Consider a follow-up outreach [2 weeks?] later
- Review existing information to determine if action is necessary even without a complaint (education? campus message?)
- Clery report?

Situations leading to a TIXC-initiated complaint

- Follow-up with would-be complainant to explain the process being initiated and offer an opportunity to participate and/or meet with you to discuss their concerns
- Clery report?

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Initial Meeting

Guidance from the 2020 Regs

- Initial meeting should explain:

    - supportive measures
    - process for filing a formal complaint
    - that the complainant may choose whether or not file a complaint
- Outreach is required upon receipt of a report

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Initial Meeting

- initial meeting ≠ investigative interview
- support person is welcome
- assure individual that resources/supportive measures are available even without a complaint
- assess safety
- students: academic or extracurricular concerns?
- employees: schedule or work location concerns?
- discuss supportive measures
- discuss logistics of following up
- document/notes of meeting

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Follow-up after Initial Meeting

- Follow-up email summarizing options provided
    - Discuss a rough timeline for deciding on next steps
- Are check-ins necessary/wanted?
- Assess whether new information changes TIXC-initiated complaint analysis
- Assess whether other measures are necessary to "ensure sex discrimination does not occur or recur"
- Clery report?
- Implement supportive measures

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Submodule 3

What are supportive measures?

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Definitions

2020 Regulations: § 106.30

Supportive measures means nondisciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.

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Documenting Supportive Measures

- What supportive measures were offered?
- What supportive measures were requested?
- What supportive measures were provided?
  - Or reasons why none were provided
- Is there a review period for the supportive measures or subsequent follow-up necessary

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Emergency Removal ≠ Supportive Measure

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Examples of Supportive Measures

- Counseling services
- Academic accommodations
- Schedule modifications
- Campus escort services
- Contact restrictions
- Changes in working conditions
- Changes in housing
- Leaves of absence
- Increased security and monitoring of campus areas
- Training and education programs related to sexual harassment

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Potentially Sticky Issues

Privacy around supportive measures

The recipient will maintain as confidential any supportive measures provided to a complainant or respondent, to the extent possible.

Mutual or Non-mutual Contact Restrictions

What about shared spaces?

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Factors to Consider re: Contact Restrictions

- Needs expressed by the complainant or respondent
- Ages of the parties involved
- The nature of the allegations and their continued effect on the complainant or the respondent
- Whether the parties continue to act directly in the school's education program or activity
- Whether steps have been taken to mitigate the harm from the parties' interactions, such as implementation of a protective order

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Submodule 4

When should the Title IX Coordinator initiate a complaint?

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Initiating the Grievance Process

2020 Regulations

- Formal Complaint – Signed, written, formal request
- Must allege sexual harassment and request that the school investigate

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TIXC-initiated Complaint

Factors that can be considered by a TIXC before initiating a complaint:

- Complainant's request not to proceed
- Complainant's reasonable safety concerns
- Risk that additional sexual harassment occurs
- Severity of alleged sexual harassment
- Age and relationship of parties
- Scope of alleged sexual harassment
- Availability of evidence
- Whether school could end sexual harassment within/without its grievance procedures

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Practical Tip:

Keep these factors in mind during your report assessment and your initial meeting with the potential complainant.

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TIXC-initiated Complaint

If the Title IX Coordinator initiates a complaint, the TIXC does not "stand in" for the complainant.

- The rights or obligations of "the parties" with respect to the grievance procedures do not apply to the Title IX Coordinator.

TIXC must notify the complainant before initiating complaint contrary to their wishes and appropriately address reasonable safety concerns.

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Thank you!

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