

New Title IX Regulations

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Overview

- Title IX
- Brief History
- Major Changes Under the New Regulations
- Process Overview
- Application of Title IX Grievance Process to Faculty and Staff
- Next Steps
- Considerations Moving Forward



Title IX of the Education Amendments of 1972

“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.”

Brief History

- On November 16, 2018, the Department of Education released their proposed Title IX regulations.
- Institutions had 60 days from that date to submit for the Department of Education to review. Skidmore College signed on to two letters mostly raising significant concerns over the proposed regulations.
- On May 6, 2020, the Department of Education announced the new Title IX regulations with an implementation date of August 14, 2020.

Major Changes Under the New Regulations

- Live Adjudication Hearings
- Cross-Examining Advisors
- Definition of Sexual Harassment
- Jurisdiction



Live Adjudication Hearings

- Estimated hearing length likely between to 3-8 hours.
- Cross-examination must be permitted by Advisors of Choice
- If a party or witness does not participate, the evidence and statements they provided during the investigation cannot be considered by the “decision-maker” or adjudicator(s).
- A decision-maker(s) will need to screen cross-examination questions for relevancy and provide rationale for deeming questions irrelevant in real time.

Cross-Examining Advisors

- Parties must at some point have an advisor who can cross-examine for the hearing.
- If a party cannot find or afford a cross-examining advisor, the College must provide one.
- Employees vs External Lawyers



Narrower Definition of Sexual Harassment

- “...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”
- Quid pro quo
- Sexual assault, dating violence, domestic violence, and stalking, as defined by Clery Act and VAWA

Jurisdiction

- Outside of Title IX Jurisdiction:
 - If the conduct alleged does not align with sexual harassment definition in regulations;
 - Did not occur in the recipient's education program or activity; or
 - Did not occur against a person in the United States
- Cases that fall outside the new sexual harassment definition and/or geographical jurisdiction must be “dismissed” under Title IX but can be addressed through other institutional policies.

Process Overview



- Report/Intake
- Supportive Measures
- Formal Complaint
- Investigation
- Hearing
- Appeal

Application of Grievance Process to Faculty & Staff

Process: Report/Intake/Supportive Measures → Formal Complaint → Investigation → Hearing → Appeal

- Roles Needed:

- Complaint Intake/Process Manager
- Process Appeals/Administrator
- Investigators
- “Decision-Maker”/Adjudicator(s)
- Advisor(s) for Cross-Examination
- Appeal Panel

- Training and Resources:

- Individuals assuming roles involved must be trained as of August 14, 2020.
- Materials used to train individuals must be accessible on our website by August 14, 2020.
- Availability and capacity of faculty and staff involved in the process to be trained in time
- Articulation agreements with external providers

Additional Implications

- Federal vs State
- Legal Challenges
 - Lawsuits
 - Congress
- Informal Resolution Process
- Evidentiary Standard Consistency
- Impact on Climate
- Scheduling & Logistics



Next Steps

- Policy Drafting - In Progress
- Consultation and Feedback - Ongoing
- Internal Policy Review - Early July
- Legal Review of Policies - July 15
- Training - Late July/Early August



Considerations Moving Forward

- Implementing new provisions while remaining aligned with Skidmore values
- How will this be addressed through shared governance?
- Given the training and support needs, what is the role of existing groups and committees in the short and long terms?
- Time Commitment

Questions and Comments

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