



TITLE IX AND SEXUAL HARASSMENT—WHAT IT MEANS FOR AUTRY

Training Presented by RFR Attorney Karen L. Long¹

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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.”

NOTES

Department of Education’s Long-Awaited Title IX Rules

- Released May 6, 2020
- Effective August 14, 2020
- Specifically address sexual harassment
- Establish procedural requirements from the report of possible sexual harassment through any hearing and appeal

A Look in the Rearview Mirror

- 1972 – Title IX is enacted
- 1974 – First Title IX regulations issued
- 1992 – U.S. Supreme Court recognizes student right to money damages for sexual harassment (*Franklin v. Gwinnett County Schools*)
- 1997 – OCR issues guidance on sexual harassment requiring institutions to respond
- 1998 – U. S. Supreme Court sets standards for teacher-on-student harassment liability— “deliberate indifference” after “actual notice of misconduct (*Gebser v. Lago Vista School District*)”
- 1999 – The U.S. Supreme Court releases court decision (*Davis v. Monroe County*) with a narrow definition of “sexual harassment”

Key Title IX Terms

- Actual knowledge – *for secondary students notice of sexual harassment or allegations of sexual harassment to Autry’s Title IX Coordinator or any official or employee; for adult students, notice to the Title IX Coordinator or any Autry official who has authority to institute corrective measures on behalf of Autry.*
- Complainant – *person alleged to be the victim of conduct that could constitute sexual harassment.*

¹ Karen is a shareholder and partner with Rosenstein, Fist & Ringold. She serves as an Adjunct Settlement Judge for the Northern District of Oklahoma, completed 2 terms as a Commissioner on Oklahoma’s Ethics Commission, and is a frequent speaker on education and the law. She may be reached at karenl@rfrlaw.com or (918) 585-9211. This material is subject to copyright: © 2020 Rosenstein, Fist & Ringold. All rights reserved.

- Emergency removal – *may be used when necessary to protect a student or other individual.*
- Formal complaint – *a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent(s) and requesting that Autry investigate the allegation of harassment.*
- Grievance process – *the formal process by which claims of sexual harassment are examined and decisions regarding responsibility, sanctions, or other actions reached.*
- Informal resolution – *consensual resolution, following filing of a formal complaint, regarding solution to sexual harassment claim.*
- Live hearing – *formal complaints involving adult students may include a hearing where parties are present and a hearing is conducted; in contrast, a non-live hearing is used in complaints involving secondary students and the issues are decided through an alternate hearing process that does not involve a live hearing.*
- Report – *the initial report from a person (may or may not be a complainant) of sexual harassment or possible sexual harassment.*
- Respondent – *a person who has been reported to be the perpetrator of conduct that could constitute sexual harassment.*
- Sexual Harassment – *unwelcome sexual conduct that is based on sex (for instance—gender, gender identity, sexual orientation); may be referred to as a hostile work or hostile education environment.*
- Supportive measures – *nonpunitive individualized services to restore or preserve equal access to programs or services.*

Autry’s Policy

Sex Discrimination

- Conduct directed at an individual or group
- that subjects the individual or group to treatment that adversely affects their employment or education, or institutional benefits
- on account of sex or gender

Sexual Harassment

- Unwelcome conduct (conduct involving secondary students and an Autry Tech employee will always be deemed unwelcome)
- Determined by a reasonable person
- To be so severe, pervasive, and offensive that it effectively denies a person equal access to Autry’s education programs or activities

Hostile Environment—Totality of Circumstances

- Frequency
- Nature and severity
- Physically threatening
- Deliberate, repeated humiliation (based on sex)
- Effect on alleged victim’s mental or emotional state
- Directed at one or more persons

- Other discriminatory conduct
- Continued / repeated verbal abuse of a sexual nature
- Speech or conduct deserving constitutional protections

**Quid Pro Quo Sexual Harassment
(involves person of authority over complainant)**

- Unwelcome sexual advances (conduct involving secondary student and Autry Tech employee will always be deemed unwelcome)
- Request for sexual favors
- Other verbal or physical conduct of a sexual nature
- Explicitly or implicitly, the failure to submit or rejection will result in adverse consequences

Sexual Violence

- Sexual assault
- Domestic violence
- Dating violence
- Stalking

Examples of Harassment

- An instructor insists that a student have sex or engage in sexual acts with him/her in exchange for a good grade. This is harassment regardless of whether the student agrees to the request.
- A student repeatedly sends sexually oriented jokes around in an email list that the student created, even when asked to stop; this causes one recipient to avoid the sender on campus or in connection with classes or district sponsored events in which both are involved.
- An instructional assistant probes for explicit sexual details, and demands that students respond to him or her, though the student is clearly uncomfortable and hesitant.
- An administrator asks a student for nude or semi-nude pictures to be sent via Snapchat or other social media.
- An adjunct instructor provides explicit details of his sexual past or describes his sexual relationship with his spouse or girlfriend.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to his clear discomfort and embarrassment.

Autry's Response to Sexual Harassment

- *When*—upon receiving “actual knowledge” of sexual harassment
- *How quickly*—promptly
- *In what manner*—one that is reasonable in light of known circumstances

Reporting Sexual Harassment

- *Who*—any person may report (victim or not)
- *When*—anytime including non-business hours
- *How*—by mail, telephone, email or any other way that gets the report to the Title IX Coordinator
- **Title IX Coordinator: Carol Colwell**
Administration Building
1201 West Willow
Enid, Oklahoma 73703
Phone: 580.242.2750, Ext: 165
Email: ccolwell@autrytech.edu
- Mandatory reporters—all Autry employees
- Student reports—to any Autry employee and/or the Title IX Coordinator

Autry's Response Upon Receipt of Sexual Harassment Report

1. Title IX Coordinator—promptly contacts complainant confidentially to discuss supportive measures
2. Coordinator explains the Complaint process for formal complaint
3. Coordinator explains the investigation process
4. Coordinator explains informal resolution options (where applicable)
5. Coordinator—where possible—respects wishes of complainant

Autry's Response After Formal Complaint

- Specific actions required for investigating, dismissing and determining responsibility
- Parties treated equitably
- Avoidance of conflicts of interest (investigators, decisionmakers, hearing committee)
- Respondent is presumed not responsible
- Prompt timelines
- Description of possible discipline & other remedies
- Appeal procedures
- Range of supportive measures
- No breach of privilege without personal waiver
- Written notice to parties upon receipt of written complaint
- Sufficient time to allow respondent to prepare response before first interview

Title IX Coordinator's Written Notice to Parties (Complainant & Respondent)

- Grievance process
- Informal resolution process
- Allegations (must have details—names, conduct, date, location, etc.)
- Statement that respondent presumed not responsible; responsibility to be determined at conclusion of grievance
- Parties' rights to have an attorney or non-attorney advisor
- Parties' rights to inspect and review evidence

- Citation to any provision in the conduct code that prohibits knowingly making false statement
- Citation to any provision that prohibits knowingly providing false evidence
- Notice must be supplemented if new allegations opened for investigation

Investigations – What to Expect

- Investigator cannot be the decisionmaker
- Investigator will issue written determination:
 - Allegations
 - Procedural steps taken
 - Findings of fact
 - Application of conduct code to facts
 - Statement and rationale for result as to each allegation

Title IX Hearing

- Title IX Coordinator determines if hearing necessary
- Notice in writing to both parties if hearing to be held
 - Notice includes alleged policy violation
 - Notice to appear at hearing
 - Complainant's rights
 - Respondent's rights
 - Standard of proof – preponderance of evidence
- Hearing Officer
- Live hearing (in matters involving adult students)
 - Opening statements
 - Each party's evidence and witnesses
 - Closing statements
- Non-live hearing (in matters involving secondary students)
 - Written exchanges until all parties have provided all relevant information and responses

Hearing Outcome

1. Respondent is not responsible for sex discrimination or sexual harassment
2. Respondent is responsible for sex discrimination or sexual harassment
3. Respondent is responsible and sanctions will apply
4. Respondent is not responsible based on Title IX standards but engaged in a policy violation for which sanctions will independently be considered
5. Parties advised of appeal rights

Sanctions for Sex Discrimination

- Restriction(s)
- Service project
- Probation
- Suspension or removal from center related activities/competitions

- Suspension (short or long-term removal not to exceed the current and ensuing semester)
- Removal (adult students—with no or conditional right to re-enroll)
- Other sanctions appropriate to circumstances

Sanctions for Sexual Harassment

- Restriction(s)
- Service project
- Behavioral change requirement
- Suspension or removal from center related activities/competitions
- Probation
- Suspension (short or long-term removal not to exceed the current and ensuing semester)
- Removal (adult students—with no or conditional right to re-enroll)
- Other sanctions appropriate to circumstances

Sanctions for Sexual Violence

- Suspension or removal w/ permanent record of the action in student record
- Criminal prosecution likely

Appeal Procedures (available to both parties)

- In writing to the Superintendent within 5 days of decision
- Appeal must cite specific reason(s) with supporting arguments
 - Hearing not conducted in conformity with procedures resulting in substantial prejudice
 - Evidence was not “sufficient” to justify decision
 - New evidence that would have substantially affected the outcome of the hearing discovered after the hearing
 - Sanction not appropriate for the violation (inherently inconsistent with Atry procedures or precedent)
- Superintendent reviews the record of hearing
 - May impose lesser sanction
 - May rescind previous sanction
 - May return a recommended sanction to hearing officer for review or reconsideration
 - If new evidence substantially affecting outcome – may refer matter to hearing officer for rehearing of specific issues or entire matter
- Superintendent’s final decision sent in writing to both parties

CAMPUSES ARE SAFER WHEN BYSTANDERS INTERVENE

Know My Name by Chanel Miller

Emily Doe – victim of Stanford University varsity swimmer convicted of sexually assaulting her behind a dumpster when she was unconscious; 2 bystanders intervened

Bystanders Play Critical Roles

- As observers
- As interveners
- In reducing risks
 - Sexual harassment
 - Sexual assault
 - Dating violence
 - Domestic violence
 - Stalking

Bystander Intervention Essentials

- Be aware of individuals and circumstances
- Err on the side of intervention
- Be alert to signs of danger (persons or environments)
- Do not ignore odd circumstances
- Avoid defaulting to stereotypes
- Recognize the signs of sexual assault
 - Most victims know their attacker
 - Perpetrators choose targets
 - Perpetrators manage targets

Intervention Strategies

- Eyes wide open
- Have a plan
- Divert the intended victim
- Distance the perpetrator
- Delegate to a person of authority
- Confront the perpetrator

Reducing Bystander Risk

- Call campus security or law enforcement immediately
- Be loud
- Know your limitations
- Carry emergency contact information at all times

Don't Be Shy!

For more answers or additional information, contact Autry's Title IX Coordinator:

Carol Colwell, Autry Administration Building

1201 W. Willow

Enid, OK 73703

Phone: 580.242.2750, Ext. 165

Email: ccolwell@autrytech.edu
