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The Role of a Coordinator

Title IX, ADA/504, Affirmative Action Officer, Clery Compliance, etc.

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Title IX

Role of a Coordinator

Title IX Summary

- The official rule **34 CFR Part 106** is a federal regulation that addresses Title IX of the Education Amendments of 1972. Title IX prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance. The proposed rule aims to govern how institutions, such as schools and colleges, handle allegations of sexual harassment and assault, ensuring compliance with Title IX requirements.
- The regulations cover a broad range of educational institutions, including public and private schools, colleges, universities, and vocational schools, that receive federal financial assistance.
- Institutions are required to take proactive steps to **prevent** sexual harassment and assault, including implementing policies, procedures, and training programs. They must also promptly respond to reports of harassment or assault and provide support to victims.
- The regulations set forth detailed **procedures** for handling complaints of sexual harassment or assault. Institutions are required to establish and publicize grievance procedures for addressing complaints of sex discrimination. These procedures include steps for reporting incidents, filing a complaint, conducting investigations, adjudicating cases, and processing appeals.

Title IX Summary (cont.)

- Institutions are obligated to offer **supportive measures** to individuals involved in Title IX complaints, regardless of whether a formal complaint is filed, or a formal investigation is initiated. These measures may include counseling, academic accommodations, and other forms of support to ensure the well-being of those affected and to address the impact of the alleged discrimination.
- When a complaint of sex discrimination is filed, the institution is responsible for **prompt and equitable** resolution of complaint. The institution must then make a determination based on the **preponderance of the evidence** standard. Both the complainant and the respondent have the right to appeal the outcome of the investigation and any resulting disciplinary actions or decisions made during the Title IX grievance procedure. **Note** – higher standards can be adopted by policy.
- Institutions are required to provide **training** to employees involved in Title IX investigations and adjudications, including Title IX Coordinators, investigators, decision-makers, and any others who may be involved in the grievance process, ensuring they have the necessary knowledge and skills to handle such cases effectively and impartially.
 - Training on **sex discrimination**, conducting **investigations** in a fair and impartial manner, and understanding the **rights and responsibilities** of all parties involved.

Title IX Coordinator

- Each recipient of Title IX must **designate and authorize at least one employee**, referred to as a **Title IX Coordinator**, to coordinate its efforts to comply with the responsibilities under Title IX. A recipient **may have more than one Title IX Coordinator**. If so, the recipient must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities and ensure the recipient's consistent compliance with its responsibilities under Title IX. As appropriate, a recipient may delegate, or permit a Title IX Coordinator to delegate, specific duties to one or more designees.
- Under the final regulations, the Title IX Coordinator is responsible for:
 - Compliance Oversight – including coordinating the pre and post August 1, 2024 rules
 - Training and Education
 - Investigations and Grievance Processes
 - Determining whether to initiate investigation notwithstanding complainant's request to withdraw or not file complaint
 - Supportive Measures
 - Documentation and Reporting
 - Policy Development
 - Prevention Programs

Title IX Coordinator Responsibilities

Compliance Oversight

- The Title IX coordinator must ensure that the institution complies with Title IX of the Education Amendments of 1972, including the implementation of policies and procedures to address sexual harassment and discrimination.
- Must review reporting procedures and practices to identify and remove barriers to reporting sex discrimination or harassment.

Training and Education

- The Title IX coordinator must provide training for students, faculty, and staff on Title IX policies, rights, and responsibilities, including how to report incidents of sexual harassment or discrimination and the procedures that will follow.

Investigations and Grievance Processes

- The Title IX coordinator oversees the investigation of Title IX complaints and manages the grievance process, ensuring a fair and impartial process for all parties involved. This includes conducting thorough investigations within prescribed timelines, providing opportunities for both the complainant and respondent to present evidence, and making decisions based on the preponderance of evidence standard. (§ 106.44 (f)(1))
- Coordinator may serve as the investigator, decision-maker, or both. Must be a separate appeal decision-maker.

Title IX Coordinator Responsibilities

Supportive Measures

- The Title IX Coordinator must implement supportive measures for individuals involved in the Title IX complaints, such as interim measures to ensure the safety and well-being of all parties, regardless of whether a formal complaint is filed or during the investigation and adjudication process. This may include academic accommodations, counseling services, and orders for non-contact. (§ 106.44 (g))

Documentation and Reporting

- The Coordinator is responsible for maintaining detailed records of all Title IX complaints, investigations, and resolutions. They must report data as required by the Department of Education and ensure transparency in the handling of cases.

Policy Development

- The Title IX coordinator must regularly review and update institutional policies and procedures related to Title IX to ensure they meet current legal standards and are in best practice for addressing sexual harassment and discrimination.

Prevention Programs

- The Title IX coordinator must develop and implement prevention programs aimed at reducing incidents of sexual harassment and discrimination, fostering a safe and inclusive campus environment.

Initial Response to Sex Discrimination

When made aware of sex discrimination or conduct that reasonably may constitute sex discrimination, the Title IX Coordinator must take action to **end** it, **prevent** its recurrence, and **remedy** its effect.

Treat the complainant and respondent equitably.

Offer and coordinate supportive measures to complainant and to respondent (if applicable)

- Title IX Coordinator generally may not disclose information about supportive measures to persons other than the person to whom they apply.

Notify the complainant or reporter of the school's Title IX grievance procedures and informal resolution process.

Notify the respondent of the grievance procedures (if a complaint is made).

Response to Sex Discrimination (Cont'd)

In the absence of a complaint, determine if circumstances require that the Coordinator serve as the complainant to initiate investigation process (based on the likelihood of an imminent and serious threat to the health and safety of any person).

Determine whether a complaint is subject to dismissal (i.e. does not state allegations that would be a violation of Title IX if established).

Determine if informal resolutions procedures are appropriate, and if so seek voluntary participation from parties (**Note** – Title IX Coordinators can serve as informal resolution facilitator, but then cannot serve as an investigator or decisionmaker for the institution).

Designate investigator and decision-maker

Title IX Regulations - Litigation

- On Monday, June 17, 2024, the U.S. District Court, Eastern District of Kentucky, issued an order enjoining and restraining the U.S. Department of Education from “implementing, enacting, or taking any action in any manner to enforce” the 2024 Title IX regulations.
- It was found that the new regulations “would turn Title IX on its head by redefining ‘sex’ to include ‘gender identity,’” and this interpretation “conflicts with the plain language of Title IX.” The Court further identified “serious First Amendment implications” in the regulations’ “definition of sexual harassment which may require educators to use pronouns consistent with a student’s [...] gender identity rather than their biological sex” even if doing so conflicts with the educators’ beliefs. The Court found that the Department acted arbitrarily and capriciously in failing to provide a reasoned explanation for departing from its longstanding interpretations regarding the meaning “sex.”
- The preliminary injunction is limited to the states of Tennessee, Kentucky, Ohio Indiana, Virginia, and West Virginia. A week prior to June 17, a federal court in Louisiana granted a preliminary injunction prohibiting enforcement in Louisiana, Mississippi, Montana, and Idaho. Decisions in the Kanas, Texas, and Alabama cases are expected soon. **Wisconsin is not currently a party to any pending litigation seeking to prevent enforcement of the 2024 regulations. It is recommended to continue the implementation of these regulations.**



ADA/504

Role of a Coordinator

ADA/504

- The **Americans with Disabilities Act (ADA)** is a federal law that prohibits discrimination against individuals with disabilities in all areas of public life, including schools.
- **Section 504 of the Rehabilitation Act of 1973** ensures that students with disabilities have equal access to education and are not excluded from participating in, denied benefits of, or subjected to discrimination under any program receiving federal financial assistance.
- These are essential frameworks that ensure that students with disabilities receive equal access to education and are provided with necessary accommodations to succeed.

ADA/504 Coordinator

- Under **Section 504 of the Rehabilitation Act of 1973**, each school district that receives federal financial assistance must designate at least one employee to coordinate the district's compliance with Section 504.
- Under the **Americans with Disabilities Act**, a public entity with 50 or more employees must have at least one "responsible employee," often referred to as the ADA Coordinator, to coordinate its efforts to comply with and carry out responsibilities under Title II.
- Public entities that receive federal funding are covered by Section 504 and ADA. Given that each Act requires a coordinator, public entities may have **one** person serve as both ADA and the 504 Coordinator.
- An ADA/504 Coordinator must make sure that the public entity meets its Title II responsibilities.

ADA/504 Responsibilities

General Nondiscrimination

- Individuals with disabilities must have an equal opportunity to participate in and benefit from all the programs, services, and activities a public entity provides in the most integrated setting possible.
- To avoid discriminating against people with disabilities, a public entity must modify its policies, practices, and procedures when needed. A reasonable modification is not required when a public entity can show it would fundamentally alter the nature of its service, program, or activity. Reasonable modification requests do not need to be in writing or use specific words.

Complaints and Grievance Procedures

- A public entity must adopt and publish a complaint or grievance procedure that members of the public can use. The ADA Coordinator or their designee must investigate and quickly resolve all complaints received about the public entity's failure to comply with its Title II responsibilities.

Notice

- All public entities must publish a notice to the public that includes information about Title II of the ADA and how it applies to its programs, services, and activities. It should also list the ADA Coordinator's name and contact information. Public entities can choose how to provide this notice (public postings, website, etc.).

ADA/504 Responsibilities

Facility Accessibility and Program Accessibility

- Public entities must design and construct all new and altered buildings and facilities, like parking lots, in compliance with either the 2006 ADA Standards for Transportation Facilities or the 2010 Standards for Accessible Design. Buildings and facilities constructed before the ADA went into effect are not required to comply fully with the ADA Standards. No facilities are considered grandfathered, no matter when they were built.
- All public entities' programs– but not all buildings– must be accessible. Program accessibility means programs, services, and activities provided by a public entity, when viewed as a whole, must be accessible to and usable by people with disabilities. A public entity may provide an activity in one of the public entities' accessible buildings.

Transition Plan

- If public entities with 50 or more employees need to make structural changes to existing building, facilities, or their public rights-of-way to meet the program accessibility requirement, they must develop a transition plan that lists any accessibility problems or barriers and the structural changes needed.
- The public entity must allow all interested persons, including people with disabilities and representatives of disability organizations, to provide comments during the transition plan's development.
- The plan must include a timeline for completing the activities and the official responsible for carrying out the plan. Although public entities are not required to update their transition plans under the Title II regulations, an updated transition plan is often required by court settlements or to receive state and federal funding.

ADA/504 Responsibilities

Self-Evaluation

- A public entity of any size must review its services, policies, and practices to determine if they violate Title II and modify those that do.
- During its self-evaluation process, the public entity must allow all interested persons, including people with disabilities and representatives of disability organizations to provide comments.
- After the self-evaluation is complete, public entities with 50 or more employees must keep for at least three years a list of the interested people and a description of the areas reviewed and any modifications made. Public entities must continue to comply with Title II even after the self-evaluation is complete.

Effective Communication

- In all programs, services, and activities of a public entity, communication with individuals who have vision, hearing, and/or speech disabilities must be as equally effective as communication with individuals without disabilities. Auxiliary aids and services such as accessible written materials, sign language interpreters, and real-time captioning can be used to provide effective communication. Effective communication requests do not need to be in writing or using a specific language. Public entities must give primary consideration or preference to the auxiliary aid or service requested by the person with the disability and must not charge a fee for an aid or service.



Clery Compliance **Role of a Coordinator**

The Clery Act

- The **Clery Act** requires all postsecondary institutions to report campus crime data, support victims of violence, and publicly outline the policies and procedures they have in place to improve campus safety.
- This is a consumer protection law that aims to provide transparency around **campus crime policy and statistics**.
 - The regulations require institutions to maintain statistics about the number of incidents of dating violence, domestic violence, sexual assault, and stalking.
 - Institutions must provide this data to incoming students and new employees and describe in their annual security reports primary prevention and awareness program
- These programs must include:
 - a **statement** that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking, as those terms are defined in these final regulations;
 - the **definitions** of these terms in the applicable jurisdiction; the definition of “consent,” in reference to sexual activity, in the applicable jurisdiction;
 - a **description** of safe and positive options for bystander intervention; information on risk reduction; and information on the institution’s policies and procedures after a sex offense occurs

The Clery Act

The Clery Act requires an institution to:

- Collect, classify, and count crime reports and statistics
- Issue campus alerts and warning notices
- Publish an Annual Security Report (Due date: October 1)
- Disclose missing student notification procedures, when applicable
- Submit crime and fire statistics to the Department, when applicable
- Disclose procedures for institutional disciplinary actions
- Provide educational programs and campaigns
- Keep a daily crime log, when applicable
- Disclose fire safety information, when applicable

The Clery Act

- The regulations require institutions to provide and describe in their **annual security reports**, ongoing prevention and awareness campaigns for students and employees. These campaigns must include the same information as the institution's primary prevention and awareness program.
- Institutions must describe each type of **disciplinary proceeding** used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; how to file a disciplinary complaint; and how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking.
- Institutions must list all of the possible **sanctions** that the institution may impose following the results of any institutional disciplinary proceedings for an allegation of dating violence, domestic violence, sexual assault, or stalking.

Clery Compliance Officer

- The Clery Act define the role of a “**campus security authority**” (CSA) as individuals responsible for reporting crime information to the campus’ designated Clery Compliance Officer or Campus Safety/Police Department.
- The Clery Act requires certain roles to pass along information about Clery Act crimes occurring within Clery geography to the college/university’s designated crime collection body – most often its campus police or public safety department.
- **CSAs** are defined as being responsible for one or more of the following:
 - Campus police or public safety department
 - Having responsibility for campus security but not being part of a campus police or public safety department, for example, someone responsible for monitoring access to a building but not a campus police or public safety officer
 - Someone identified as one to whom a crime can be reported
 - Officials with significant responsibility for student or campus activities
- Examples Roles:
 - Campus Police and Security Officers
 - Dean of Student and Student Affair Staff
 - Residence Hall Advisors and Directors
 - Coaches and Athletic Directors
 - Student Discipline (including Judicial Staff)
 - Title IX Coordinators and Officials



Affirmative Action Officer Role of a Coordinator

Affirmative Action

- **Affirmative action** is designed to **promote** equal opportunity and increase diversity within secondary education. Affirmative action refers to policies and practices that aim to address historical and ongoing inequalities faced by underrepresented groups, such as racial minorities, women, and individuals from economically disadvantaged backgrounds.
- Affirmative action may **impact** admissions, hiring, and other institutional practices. Its primary goals are to:
 - **Enhance Diversity**: Create a diverse student body and faculty that reflects a wide range of backgrounds, experiences, and perspectives.
 - **Correct Historical Injustices**: Address and mitigate the effects of past discrimination and systemic inequities.
 - **Promote Equal Opportunity**: Ensure that all individuals, regardless of their background, have fair access to educational and employment opportunities.
 - **Improve Educational Outcomes**: Foster an inclusive environment that enhances learning and prepares students for a diverse society and workforce.

Affirmative Action Officer

- The role of an **Affirmative Action Officer (AAO)** in an educational institution involves the implementation and advisement of policies and practices designed to **promote** diversity, equity, and inclusion (DEI) within the institution.
- The AAO develops and implements affirmative action **policies** to ensure compliance with federal and state laws, such as **Title VII of the Civil Rights Act** and **Executive Order 11246**. These policies aim to prevent discrimination and promote equal opportunities in hiring, admissions, and other institutional practices.
- The AAO ensures that the institution **complies** with affirmative action laws and regulations. This includes preparing and submitting affirmative action plans (AAPs) and reports to relevant government agencies, such as the Office of Federal Contract Compliance Programs (OFCCP).
- The AAO **provides training** and **educational programs** for faculty, staff, and students on topics related to affirmative action, DEI, and non-discrimination. This may be done through workshops, seminars, and informational sessions designed to raise awareness and foster a more inclusive campus environment.

Affirmative Action Officer

- The AAO **collects and analyzes data** related to the institution's workforce and student body (demographics, trends). This information is then use to develop improvement strategies.
- The AAO works to **recruit and retain** a diverse workforce and student body. This may include outreach programs, partnerships, and the creation of a supportive and inclusive culture.
- The AAO **investigates** complaints of discrimination, harassment, and other violations of affirmative action policies.
- The AAO serves as a **resource and advisor** to the institution's leadership, faculty, staff, and students on matters related to affirmative action and DEI.
- The AAO **engages with the community** to promote the institution's commitment to affirmative action and DEI. This may include representation of the institution at conferences, meeting, and other public forums.
- The AAO is responsible for **preparing and distributing regular reports** on the institution's affirmative action and DEI efforts. These reports track progress, identify challenges, and demonstrate accountability.

Thank you!



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