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## **Questions and Answers Regarding Title IX Procedural Requirements**

*Title IX of the Education Amendments of 1972, as amended, is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity. In addition to traditional educational institutions such as colleges, universities, and elementary and secondary schools, Title IX also applies to any education or training program operated by a recipient of federal financial assistance. Many of these education program providers/recipients became subject to Title IX regulations when the Title IX final Common Rule was published on August 30, 2000. All federal agencies that provide funding for any education or training programs have new responsibilities in ensuring that their recipients comply with the nondiscrimination mandate of Title IX and its procedural requirements by establishing a method for receiving and resolving sex-based discrimination complaints. Listed below are questions and answers regarding some of the basic procedural requirements. For a more comprehensive overview, refer to the Title IX Final Common Rule for 21 Federal agencies: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (65 Fed. Reg. 52857).*

### **ASSURANCES**

#### ***Question 1: What is the purpose of an assurance?***

An assurance ensures that applicants and recipients of federal financial assistance (FFA) are aware of their obligations to operate all of their education programs or activities in compliance with the nondiscrimination mandates of Title IX and the Title IX implementing regulations. See generally 65 Fed. Reg. 52867 at § .115.

#### ***Question 2: What must be contained in an assurance?***

The assurance must state that the applicant or recipient will comply with all applicable federal statutes relating to nondiscrimination by recipients of federal financial assistance. This includes, but is not limited to, Title IX. The Title IX regulations require that the assurance must contain language that commits the applicant or recipient to undertake whatever remedial action is necessary to eliminate any existing sex discrimination or to eliminate the effects of past discrimination – regardless of whether the discrimination occurred prior to or subsequent to the submission of the assurance.

The Title IX regulations do not require federal agencies to use any specific language in the assurance but they do require the federal agencies to designate the form of the assurance and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

#### ***Question 3: Is every application for or award of FFA required to have an assurance?***

No. The Title IX regulations eliminated the requirement that assurances be provided with each and every application for FFA. Instead, either at the application or award stage, federal funding agencies

must ensure that every application for or award of FFA contain, be accompanied by, or be covered by a specifically identified assurance.\* See 65 Fed. Reg. 52867 at § .115(a).

\*Note that Title IX regulations have eliminated the requirement contained in the Department of Education's Title IX Rule (See 34 C.F.R. §106.4(a)) and the proposed Title IX Common Rule (See 64 Fed. Reg. 58576 at §\_\_ .115) that every application contain or be accompanied by an assurance. This not only gives federal funding agencies the flexibility to obtain the assurance at either the application or award stage, but also streamlines the federal grants process by eliminating the need for grant-by-grant certifications.

#### ***Question 4: What is the duration of the assurance obligations?***

Generally, recipients of FFA are obligated to comply with the nondiscrimination mandates of Title IX and the Title IX regulations for the period during which federal funding is provided.

#### **Real Property**

However, in the case of FFA to provide real property to operate an education program or activity, the assurance obligations shall be in effect for the time period during which the real property is used to provide an education program or activity. If there is a subsequent transfer of the real property, the transferees must comply with assurance obligations for the duration of the time period in which the property is used to provide and education program or activity.

#### **Personal Property**

Where FFA is provided in the form of personal property, the recipient's assurance obligations remain in effect for the time period during which it retains ownership or possession of the property.

#### ***Question 5: What else do federal funding agencies need to know about assurances?***

Under the Title IX regulations, federal funding agencies have a duty to require that recipients of FFA are aware of the obligations to comply with the nondiscrimination provisions of Title IX and Title IX regulations. It is important to note that the Supreme Court has upheld the regulatory power of funding agencies to terminate a recipient's FFA for failure to execute an assurance of compliance with Title IX.

#### **DESIGNATION OF TITLE IX COORDINATOR\***

The Title IX coordinator is the responsible employee of the recipient with major responsibility for Title IX compliance efforts. The Title IX coordinator's responsibilities are critical to the development, implementation, and monitoring of meaningful efforts to comply with Title IX. Therefore, Federal funding agencies must inform their recipients of the following obligations under the Title IX regulations:

Under the Title IX regulations, a recipient must designate at least one employee to serve as its Title IX coordinator. See 65 Fed Reg. 52867 at § .135(a). Ideally, this person may be the employee designated to handle Section 504 complaints. The recipient must notify all its students and employees, of the name, office, address, and telephone number of the employee(s) designated to serve as the Title IX

coordinator.

***Question 1: What are the responsibilities of the Title IX Coordinator?***

The Title IX coordinator has a responsibility to coordinate the recipient's efforts to comply with its obligations under Title IX and the Title IX regulations. These responsibilities include coordinating any investigations of complaints received pursuant to Title IX and the implementing regulations.

***Question 2: What factors should a recipient consider in designating a Title IX Coordinator?***

**– the tasks and responsibilities relating to the implementation and administration of the grievance process, which include, but are not limited to:**

– providing consultation and information regarding Title IX requirements to potential complainants

– distribution of grievance forms to potential complainants

– receipt of formal grievances and providing notification to complainants of receipt of the grievance

– scheduling grievance hearings

– moderation of grievance procedures

– notification to all parties regarding grievance decisions

– notification of complainants of the right and procedures of appeal

– monitoring compliance of all requirements and time-lines specified in the grievance procedures

– training of staff responsible for grievance procedures

– maintenance of grievance and compliance records and files

– provision of ongoing training, consultation, technical assistance, and information services regarding Title IX requirements, grievance issues, and compliance programs

**– the competencies and skills necessary for the effective administration of the grievance process and related activities, which include, but are not limited to:**

– in-depth knowledge of the Title IX regulation

– general knowledge of other federal and state non-discrimination laws

– knowledge of the recipient agency's Title IX grievance procedures

- knowledge of personnel policies and practices of the recipient agency/institution
- ability to prepare reports on the Title IX compliance activities and make recommendations for action by appropriate decisionmakers
- ability to communicate effectively
- ability to diagnose, clarify, and mediate differences of opinion
- ability to establish a positive climate for Title IX compliance efforts
- **basic principles regarding the effective functioning of the Title IX coordinator within the structure of the recipient agency/institution, which cannot be effective unless:**
  - **the functions and responsibilities of the Title IX coordinator are clearly delineated and communicated to all levels of the recipient agency/institution administration and to all employees and students**
  - the Title IX coordinator is provided all information and authority or access necessary to enforce compliance requirements

**\* Refer to the Department of Education document: "Title IX Grievance Procedures: An Introductory Manual" for detailed information on the duties and responsibilities of a Title IX Coordinator. This document is available by request through the [Department of Education](#) website**

#### **GRIEVANCE PROCEDURES\***

***Question 1: What are the obligations of federal funding agencies and their recipients?***

**Federal funding agencies must inform their recipients of the following:**

**Recipients must adopt and publish internal grievance procedures to promptly and equitably resolve complaints alleging discrimination on the basis of sex in its education programs or activities. See 65 Fed. Reg. 52867 at § .135(b)**

***Question 2: What is a grievance procedure?***

**The grievance procedure is a mechanism used to determine whether a particular act, policy, or practice of a recipient complies with Title IX regulations. The grievance procedures also provide the steps necessary to correct the policy or practice that does not comply with Title IX regulations and to remedy any effects of discrimination upon affected individuals.**

***Question 3: Can a recipient use its existing discrimination grievance procedures for complaints of sex harassment?***

Although federal law permits recipients to use their discrimination complaint procedures for complaints of sex harassment, it is recommended that recipients develop and use grievance procedures tailored specifically to allegations of harassment. Due to the sensitive nature of sexual harassment complaints, confidentiality may be a higher priority than in regular discrimination complaints. Thus, a grievance procedure that differs from the standard grievance procedure, at least during the early stages of proceedings, may be appropriate.

*Question 4: Do the Title IX regulations specify a certain structure or format for grievance procedures?*

Title IX regulations do not specify a structure or format for the grievance procedures. Instead, each recipient must develop grievance procedures that most effectively provide for prompt and equitable resolution of complaints. For those recipients who do not have Title IX grievance procedures or for those recipients who want to refine existing procedures, the Department of Education's guidance document, "Title IX Grievance Procedures: An Introductory Manual," (available by request at:<http://www.ed.gov/offices/OCR/publications.html>) provides some of the basic components of developing effective grievance procedures.

*Question 5: Does the existence of Title IX grievance procedures affect the right of an individual or group to file a federal complaint regarding possible Title IX violations?*

No. Individuals or groups may file a federal complaint without using the existing Title IX grievance procedures; alternatively, individuals may simultaneously file an internal grievance and file a federal complaint; or after the unsatisfactory resolution of their grievance through the recipient agency/institution grievance procedure, file a federal claim.

#### Points to Consider

It is important to note that there is no private right of action for damages for a recipient's failure to establish grievance procedures under Title IX. However, requirements under Title IX regulations to establish such procedures can be enforced administratively by the federal funding agency.

\* Refer to the Department of Education document: "Title IX Grievance Procedures: An Introductory Manual," available by request through the Department of Education website at <http://www.ed.gov/about/pubs/intro/index.html> for detailed information on Title IX grievance procedures.

#### **DISSEMINATION OF THE TITLE IX POLICY**

The Title IX regulations require each recipient to take specific steps to regularly and consistently notify the public - i.e., participants, employees, applicants, etc. that it does not discriminate on the basis of sex in the operation of its education programs and activities, pursuant to its obligations to comply with Title IX and the implementing regulations. See generally 65 Fed. Reg. 52867 at § .140

*Question 1: What specific information are recipients required to disseminate?*

The federal funding agency may specify the information it finds necessary to be contained in the recipients's notification in order to fully apprise the recipient's participants and/or employees of their protections under Title IX and the implementing regulations. However, at a minimum, the notification must contain the following:

– Title IX and the Title IX regulations also apply to employment in and admission to the recipient's education programs and activities.

– Inquiries regarding Title IX and the Title IX regulations can be referred to the recipient's designated Title IX coordinator or to the federal funding agency.

*Question 2: When do recipients have to issue this notification?*

Under the Title IX regulations, each recipient is required to make its initial notification within 90 days or September 29, 2000 or as of the date the Title IX regulations apply to the recipient - whichever is the later date.

*Question 3: Where must the notifications be disseminated?*

#### Initial Notification

Title IX regulations require recipients to notify the public of the protections assured to them under Title IX and the implementing regulations by:

– publishing the notification in newspapers\* and magazines operated by the recipient or by student or alumnus groups for or in connection with the recipient; and

– publishing the notification in memoranda or other written communications distributed to every student or employee of the recipient

\*Note that unlike Dept. of Education requirements (See 34 C.F.R. §106.9(2)(a)) and the proposed Title IX Common Rule (See 64 Fed. Reg. 58577 at §\_\_ .140(2)), the final Title IX regulations do not require publication in local newspapers.

#### Subsequent Notification

Each recipient must prominently publish a statement of its Title IX policy in each announcement, bulletin, catalog, or application form that it makes available to the public or is used in connection with any recruitment of students or employees.

Recipients must ensure that the notification is widely disseminated and easily understood.

*Question 4: What else do recipients need to know about distributing their Title IX policies?*

Recipients must not use or distribute a publication that suggests by its text or illustration that it treats applicants, students, or employees differently on the basis of sex - except as permitted under the Title

IX regulations.

Each recipient must distribute its Title IX policies, without discrimination on the basis of sex, and must inform each of its admission and employment recruitment representatives of Title IX's nondiscrimination policies. Each recipient must ensure that these representatives adhere to these policies.

#### REMEDIAL ACTION, AFFIRMATIVE ACTION, SELF-EVALUATION & TRANSITION PLANS

*Question 1: What type of remedial action must recipients provide under Title IX regulations?*

If the federal funding agency finds that the recipient violated Title IX, the recipient must undertake the remedial action the federal funding agency deems necessary to overcome the effects of such discrimination.

*Question 2: Can a recipient take affirmative steps to address the results of past sex discrimination?*

Yes. Even where there is no finding of a Title IX violation, a recipient may take affirmative steps consistent with the law to overcome the effects of conditions that resulted in limited participation of persons of a particular sex in the recipient's education program or activity.

*Question 3: Does every recipient have to conduct a self-evaluation of its current policies and practices as it relates to Title IX?*

No. Although § .110 of the Title IX regulations states that recipients must conduct a self-evaluation, it should be noted that this requirement only applies to recipient educational institutions. Most such recipients are covered by the Department of Education's Title IX regulations and have complied with this provision. However, an "educational institution" includes an institution of vocational education\* and many of these schools may not have conducted a self-evaluation if they do not receive FFA from the Department of Education.

\*defined under the Title IX regulations as "a school or institution...that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study

*Question 4: For those recipient education institutions that have NOT conducted a self-evaluation yet, what do the Title IX regulations require?*

Those recipient education institutions that have not conducted a self-evaluation are required under the Title IX regulations to evaluate their current policies and practices and the effects of such policies and practices on the admission and treatment of students, and the employment of academic and non-academic personnel working in connection with the recipient education program or activity. See 65 Fed. Reg. 52867 at § .110(c)(1).

Recipient education institutions are also required to modify any of these policies and practices that do

not or may not meet the requirements of the Title IX regulations. Id. at § .110(c)(2). In addition, these institutions must take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from such policies and practices. Id. at § .110(c)(3). After completion of the evaluation, these institutions must maintain on file for at least three years all self-evaluation and related materials and shall provide information regarding any modifications or remedial steps taken pursuant to the self-evaluation to the recipient agency's Title IX Coordinator.

*Question 5: For those recipient education institutions that have not conducted a self-evaluation yet, when must they comply with this Title IX regulation requirement?*

For those recipient education institutions that have never conducted a self-evaluation pursuant to the Title IX regulations, they are required to conduct the self-evaluation within one year of September 29, 2000.

*Question 6: What are transition plans?*

Title IX regulations state that a Title IX transition plan means a plan that is subject to the approval of the Secretary of Education under which an educational institution makes the transition from being an educational institution that admits students of one sex to being one that admits students of both sexes without discrimination. Note that the obligation to submit a transition plan is applicable only to those education institutions that receive FFA from the Department of Education since those are the only ones over which the Secretary of Education would have authority.

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