

Title IX Training

Part 1: Response to Reports of Sexual Harassment

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Regis College



Background

- Federal regulations released May 2020 and effective August 14, 2020.
- Mass.: An Act Relative to Sexual Violence on Higher Education Campuses in effect on August 1, 2021.
- Apply to students and employees.
- Impose more detailed process requirements than previous guidance.

Regis responds to all reports.

An institution MUST respond where:

- It has Actual Knowledge.
 - That occurred within its Educational Program or Activities.
 - The conduct occurred against a person on the U.S.
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- **MAY** respond beyond these circumstances – so long as there is no conflict with the Title IX regulations or other applicable law.

Actual Knowledge

- Of conduct that *could* constitute Sexual Harassment.
- To the Title IX Coordinator or other official with authority to institute corrective measures.
 - Do not need a list.
 - Examples: Dean of Students, Assoc. VP of Human Resources, Cabinet members, supervisors.
 - Not just an official who is obligated to forward a report.

Sexual Harassment – Definitions

- Quid Pro Quo Harassment – an employee offers something to an individual in exchange for sexual conduct.
- Sexual Assault – Clery Act; Violence Against Women Act
 - Fondling, Incest, Rape, Statutory Rape
 - Dating Violence, Domestic Violence, Stalking

Sexual Harassment – Definitions, cont.

- Unwelcome Conduct

- As determined by a *reasonable* person.
- To be so severe, pervasive, and *objectively* offensive.
- That it denies equal access to the educational program or activity.

- Denies Equal Access

- Examples: skipping class, declining grades, quitting a team/activity.
- The denial of access does not need to be total and does not have to involve a concrete injury.

Educational Program and Activity

- Locations, events, or circumstances;
- The institution exercises *substantial control*;
- Over the Respondent (alleged offender) and the context in which the Sexual Harassment occurs.
- Including buildings owned or controlled by an officially recognized student organization.

What are Regis' Educational Programs and Activities?

Educational Program and Activity?

- Two students in a residence hall room.
- Two employees in the break room.

- Clinical Placement at a local hospital.
- Group of students supervised by a clinical faculty member.
- Supervision by a preceptor employed by hospital.

- Two students meet at a party in a residence hall room and begin consuming alcohol.
- Leave together and go to Respondent's apartment.
- Apartment shared by multiple Regis students.
- Known as the "Chess Team" apartment every year.

- Employees meet at the grocery store.
- To buy supplies for the pep rally.

Substantial control?

Over Respondent and circumstances of Sexual Harassment?

Educational Program and Activity?

- Science Club trip – an official Regis student organization
- To the Association of University Science Clubs annual conference.
- Club president and faculty advisor make all arrangements (plane, passports, hotel).
- Regis pays for everything.
- Each student pays on their own.
- Hotel room: faculty/employee chaperones assign the rooms, actively check on students throughout evening.
- “Pick a room and I’ll see you in the morning.”
- Party in the room. Reporting Party meets Respondent who attends another college.
- Conference ends at 4:00, club dinner at 6:00 – unscheduled time in between.
- Respondent helps Reporting Party finalize Club’s Annual Awards to be given out at dinner.
- Reporting Party always wanted to visit the XYZ Museum, Respondent goes with them.

Substantial control?

Over Respondent and circumstances of Sexual Harassment?

Substantial Control?

- Fact-specific determination.
- No one factor is determinative.
- May include digital platforms.
- On or off campus.

Conduct occurred against a person in the U.S.

- Strict geographic limitation – where was an individual located when they experienced Sexual Harassment?
- Excludes:
 - Study Abroad.
 - Travel to international conferences.

Basic Content of the Title IX Response

- Equal treatment of the parties.
- Supportive Measures.
- Notice re: the Formal Complaint process.

Supportive Measures

- To restore/preserve access to Educational Programs or Activities without unreasonably burdening the other party.
- To protect the safety of the involved parties or of the educational environment.
- To deter Sexual Harassment.
- Must be non-disciplinary, non-punitive.
- Individualized services, reasonably available.
- Without fee or charge.
- E.g.: counseling, changes to work/class schedule, leaves of absence.
- Must consider wishes of Reporting Party.

**Regis responds to all reports and
investigates Formal Complaints.**

Formal Complaints

- Signed document that alleges Sexual Harassment and requests an investigation.
- Submitted by an individual who is *attempting or actually participating in the institution's Educational Programs or Activities*, e.g., current, former, or prospective student, employee, or community member.
- Cannot be anonymous.
- Title IX Coordinator can initiate independent of a Reporting Party.
 - Will consider Reporting Party's wishes and factors such as the presence of: violence, threats, use of weapons, repeat offenders.

Formal Complaints – MUST Dismiss

- Would not amount to Sexual Harassment, even if proved to have occurred.
- Did not occur within an Educational Program or Activity.
- Did not occur against a Reporting Party in the U.S.

- Response via other code of conduct/set of rules remains possible.

Formal Complaints – MAY Dismiss

- Reporting Party withdraws Formal Complaint.
- Respondent is no longer enrolled by or employed by the institution.
- Circumstances prevent gathering of enough evidence to make a final determination.

Comparison

Report

- Respond to all with Supportive Measures and notice re: how to file Formal Complaint.
- No discipline of alleged Respondent.
- Depending on nature of Supportive Measures, Respondent may not be made aware.

Formal Complaint

- Subset of all Reports.
- Initiates Investigation and Hearing process.
- Can lead to punishment/discipline of alleged Respondent.
- Respondent is informed.
- Supportive Measures remain available.

Emergency Removals

- May remove a Respondent from the Educational Program or Activity where:
 - o Individualized safety/risk analysis of a particular Respondent and the specific circumstances.
 - o Immediate threat to physical health or physical safety.
 - o Threat arises out of the Sexual Harassment allegations.

- Following the removal, Respondent can immediately challenge.

Administrative Leave – Employees Only

- If there is a Formal Complaint.
- According to standard HR practice.
- Not for student employees.



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