Title IX Training
Part 1: Response to Reports of Sexual Harassment

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Background

• Federal regulations released May 2020 and effective August 14, 2020.
• 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.

- 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.
  o Do not need a list.
  o Examples: Dean of Students, Assoc. VP of Human Resources, Cabinet members, supervisors.
  o 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
  o As determined by a reasonable person.
  o To be so severe, pervasive, and objectively offensive.
  o That it denies equal access to the educational program or activity.

• Denies Equal Access
  o Examples: skipping class, declining grades, quitting a team/activity.
  o 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.
  o 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.