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.
• New draft regulations June 3, 2022.
• 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
  o Fondling, Incest, Rape, Statutory Rape
  o 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.

Substantial control?

Over Respondent and circumstances of Sexual Harassment?

• 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?

• 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:
  o Study Abroad.
  o 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.