



**Title IX Regulations:
Faculty Senate Presentation
August 5, 2020**

Background

- November 2018 – Proposed Title IX regulations published
- 124,000+ comments submitted by the public through February 2019
- U.S. Department of Education reviewed comments and revised regulations over the course of 15 months

Final Regulations

- New regulations published May 19, 2020
- Effective date: August 14, 2020
- Intention by the Department of Education is to begin enforcement on that date
- Applies to all student and employee (faculty and staff) cases meeting the definition of sexual harassment under the new regulations

Areas of Significant Impact

- Definition of covered conduct
- Jurisdiction
- Response obligation of university
- Formal complaints
- Live hearings
- Implications for current processes addressing other forms of harassment/discrimination

Definition of Prohibited Conduct

- Sexual harassment
 - Quid pro quo (by employees only)
 - Hostile environment
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, AND objectively offensive that it effectively denies a person equal access
 - Sexual assault, stalking, dating and domestic violence

Response Obligations – Other Forms of Harassment

- Supportive measures
- Informal resolution (Section 6.2)
- Formal resolution process (Section 6.3)
 - Complaint filed
 - Investigation
 - Investigation report provided to decision-maker
 - Sanctions and appeals available

Response Obligations – Sexual Harassment

- Supportive measures
- Filing of a formal complaint
 - Mandatory dismissal of complaint
 - Optional dismissal of complaint
 - Informal resolution
 - Formal grievance process

Jurisdiction – Sexual Harassment

- Sexual harassment
- Occurs in an education program or activity controlled by the University
- Within the United States
- University controls the respondent (i.e. respondent is either enrolled or employed by the Univ.)
- Complainant is participating in or attempting to participate in the education program or activity of the University (if not, no Univ. jurisdiction)

Formal Grievance Process

- Formal complaint filed
- Investigation conducted by two trained investigators
- Investigation report completed and shared with parties and their advisors
 - Role of advisor
- Pre-hearing meeting
- Hearing
 - Outcome and sanctions
- Appeal

Hearing Details

- Trial-like process
- Cross-examination/examination of parties and witnesses
- Rulings on evidence – relevancy, admissibility
- Credibility determinations
- Knowledgeable on nuances of sexual harassment
- Detailed written decision (with sanctions)

Decision-maker and Appeal Panels

- Three-person panels, with one individual designated as the Chair
- Comprised of combination of three trained faculty and staff members