



TITLE IX AND SEXUAL HARASSMENT—WHAT IT MEANS FOR TULSA TECHNOLOGY CENTER

Training Presented by RFR Attorney Karen L. Long¹

March 10, 2021

Title IX of the Education Amendments of 1972

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity.”

NOTES

Department of Education’s Long-Awaited Title IX Rules

- Released May 6, 2020
- Effective August 14, 2020
- Specifically address sexual harassment
- Establish procedural requirements from the report of possible sexual harassment through any hearing and appeal

A Look in the Rearview Mirror

1972 – Title IX is enacted

1974 – First Title IX regulations issued

1992 – U.S. Supreme Court recognizes student right to money damages for sexual harassment (*Franklin v. Gwinnett County Schools*)

1997 – OCR issues guidance on sexual harassment requiring institutions to respond

1998 – U. S. Supreme Court sets standards for teacher-on-student harassment liability— “deliberate indifference” after “actual notice of misconduct (*Gebser v. Lago Vista School District*)

1999 – The U.S. Supreme Court releases court decision (*Davis v. Monroe County*) with a narrow definition of “sexual harassment”

Key Title IX Terms

- Actual knowledge – *for secondary students notice of sexual harassment or allegations of sexual harassment to Tulsa Tech’s Title IX or any official or employee; for adult students, notice to the Title IX Coordinator or any Tulsa Tech official who has authority to institute corrective measures on behalf of Tulsa Tech.*
- Complainant – *person alleged to be the victim of conduct that could constitute sexual harassment.*
- Emergency removal – *may be used when necessary to protect a student or other individual.*
- Formal complaint – *a document filed by a complainant or signed by the*

¹ Karen is a shareholder and partner with Rosenstein, Fist & Ringold. She serves as an Adjunct Settlement Judge for the Northern District of Oklahoma, completed 2 terms as a Commissioner on Oklahoma’s Ethics Commission, and is a frequent speaker on education and the law. She may be reached at karenl@rfrlaw.com or (918) 585-9211. This material is subject to copyright: © 2020 Rosenstein, Fist & Ringold. All rights reserved.

Title IX Coordinator alleging sexual harassment against a respondent(s) and requesting that Tulsa Tech investigate the allegation of harassment.

- *Grievance process – the formal process by which claims of sexual harassment are examined and decisions regarding responsibility, sanctions, or other actions reached.*
- *Informal resolution – consensual resolution, following filing of a formal complaint, regarding solution to sexual harassment claim.*
- *Live hearing – formal complaints involving adult students may include a hearing where parties are present and an in-person hearing is conducted; in contrast, a non-live hearing is used in complaints involving secondary students and the issues are decided through an alternate hearing process that does not involve a live hearing.*
- *Report – the initial report from a person (may or may not be a complainant) of sexual harassment or possible sexual harassment.*
- *Respondent – a person who has been reported to be the perpetrator of conduct that could constitute sexual harassment.*
- *Sexual Harassment – unwelcome sexual conduct that is based on sex (for instance—gender, gender identity, sexual orientation); may be referred to as a hostile work or hostile education environment.*
- *Supportive measures – nonpunitive individualized services to restore or preserve equal access to programs or services.*

Tulsa Tech’s Policy

Sex Discrimination

- Conduct directed at an individual or group
- that subjects the individual or group to treatment that adversely affects their employment or education, or institutional benefits
- on account of sex or gender.

Sexual Harassment

- Unwelcome conduct (conduct involving secondary students and a Tulsa Tech employee will always be deemed unwelcome)
- Determined by a reasonable person
- To be so severe, pervasive, and offensive that it effectively denies a person equal access to Tulsa Tech’s education programs or activities

Hostile Environment—Totality of Circumstances

- Frequency
- Nature and severity
- Physically threatening
- Deliberate, repeated humiliation (based on sex)
- Effect on alleged victim’s mental or emotional state
- Directed at one or more persons
- Other discriminatory conduct
- Continued / repeated verbal abuse of a sexual nature
- Speech or conduct deserving constitutional protections

Quid Pro Quo Sexual Harassment

(involves person of authority over complainant)

- Unwelcome sexual advances (conduct involving secondary student and Tulsa Tech employee will always be deemed unwelcome)
- Request for sexual favors
- Other verbal or physical conduct of a sexual nature
- Explicitly or implicitly, the failure to submit or rejection will result in adverse consequences

Sexual Violence

- Sexual assault
- Domestic violence
- Dating violence
- Stalking

Examples of Harassment

- An instructor insists that a student have sex or engage in sexual acts with him/her in exchange for a good grade. This is harassment regardless of whether the student agrees to the request.
- A student repeatedly sends sexually oriented jokes around in an email list that the student created; this causes one recipient to avoid the sender on campus or in connection with classes or district sponsored events in which both are involved.
- An instructional assistant probes for explicit sexual details, and pushes the student to respond to him, though the student is clearly uncomfortable and hesitant.
- An administrator asks a student for nude or semi-nude pictures to be sent via Snapchat or other social media.
- An adjunct instructor provides explicit details of his sexual past or describes his sexual relationship with his spouse or girlfriend.
- An ex-girlfriend widely spreads across school media false stories about her sex life with her former boyfriend to his clear discomfort and embarrassment—both are students.

Tulsa Tech's Response to Sexual Harassment

- *When*—upon receiving “actual knowledge” of sexual harassment
- *How quickly*—promptly
- *In what manner*—one that is reasonable in light of known circumstances

Reporting Sexual Harassment

- *Who*—any person may report (victim or not)
- *When*—anytime including non-business hours
- *How*—by mail, telephone, email or any other way that gets the report to the Title IX Coordinator
- Title IX Coordinator:
Tulsa Technology Center

Pam Winterscheidt, Chief Human Capital Officer, Director of Equal Opportunity
6111 E. Skelly Drive
P.O. Box 477200
Tulsa, OK 74147-7200
(918) 828-5000; pam.winterscheidt@tulsatech.edu

- Mandatory reporters—all Tulsa Tech employees
- Students report—to any Tulsa Tech employee and/or the Title IX Coordinator

Tulsa Tech’s Response Upon Receipt of Sexual Harassment Report

1. Title IX Coordinator—promptly contacts complainant confidentially to discuss supportive measures
2. Coordinator explains the Complaint process for formal complaint
3. Coordinator explains the investigation process
4. Coordinator explains informal resolution options (where applicable)
5. Coordinator—where possible—respects wishes of complainant

Tulsa Tech’s Response After Formal Complaint

- Specific actions required for investigating, dismissing and determining responsibility
- Parties treated equitably
- Avoidance of conflicts of interest (investigators, decisionmakers, hearing committee)
- Respondent is presumed not responsible
- Prompt timelines
- Description of possible discipline & other remedies
- Appeal procedures
- Range of supportive measures
- No breach of privilege without personal waiver
- Written notice to parties upon receipt of written complaint
- Sufficient time to allow respondent to prepare response before first interview

Title IX Coordinator’s Written Notice to Parties (Complainant & Respondent)

- Grievance process
- Informal resolution process
- Allegations (must have details—names, conduct, date, location, etc.)
- Statement that respondent presumed not responsible; responsibility to be determined at conclusion of grievance
- Parties’ rights to have an attorney or non-attorney advisor
- Parties’ rights to inspect and review evidence
- Citation to any provision in the conduct code that prohibits knowingly making false statement
- Citation to any provision that prohibits knowingly providing false evidence
- Notice must be supplemented if new allegations opened for investigation

Investigations – What to Expect

- Investigator cannot be the decisionmaker
- Investigator will issue written report of investigation:
 - Allegations
 - Procedural steps taken
 - Summary of all relevant evidence collected
 - Assurance that both parties (and advisors) had opportunity to review and provide a written response to the report at least 10 days prior to any scheduled hearing

Title IX Hearing

- Title IX Coordinator determines if hearing necessary
- Notice in writing to both parties if hearing to be held
 - Notice includes alleged policy violation
 - Notice to appear at hearing
 - Complainant's rights
 - Respondent's rights
 - Standard of proof – preponderance of evidence
- Hearing Officer
- Live hearing (in matters involving adult students)
 - Opening statements
 - Each party's evidence and witnesses
 - Closing statements
- Non-live hearing (in matters involving secondary students)
 - Written exchanges until all parties have provided all relevant information and responses

Hearing Outcome

1. Respondent is not responsible for sex discrimination or sexual harassment
2. Respondent is responsible for sex discrimination or sexual harassment
3. Respondent is responsible and sanctions will apply
4. Respondent is not responsible based on Title IX standards but engaged in a policy violation for which sanctions will independently be considered
5. Parties advised of appeal rights

Sanctions for Sex Discrimination

- Restriction(s)
- Service project
- Probation
- Suspension or removal from Tulsa Tech related activities/competitions
- Suspension (short or long-term removal not to exceed the current and ensuing semester)
- Removal (adult students—with no or conditional right to re-enroll)
- Other sanctions appropriate to circumstances

Sanctions for Sexual Harassment

- Restriction(s)
- Service project

- Behavioral change requirement
- Suspension or removal from Tulsa Tech related activities/competitions
- Probation
- Suspension (short or long-term removal not to exceed the current and ensuing semester)
- Removal (adult students—with no or conditional right to re-enroll)
- Other sanctions appropriate to circumstances

Sanctions for Sexual Violence

- Suspension or removal w/ permanent record of the action in student record
- Criminal prosecution likely

Appeal Procedures (available to both parties)

- In writing to the Superintendent within 5 days of decision
- Appeal must cite specific reason(s) with supporting arguments
 - Hearing not conducted in conformity with procedures resulting in substantial prejudice
 - Evidence was not “sufficient” to justify decision
 - New evidence that would have substantially affected the outcome of the hearing discovered after the hearing
 - Sanction not appropriate for the violation (inherently inconsistent with Tulsa Tech procedures or precedent)
- Superintendent reviews the record of hearing
 - May impose lesser sanction
 - May rescind previous sanction
 - May return a recommended sanction to hearing officer for review or reconsideration
 - If new evidence substantially affecting outcome – may refer matter to hearing officer for rehearing of specific issues or entire matter
- Superintendent’s final decision sent in writing to both parties

CAMPUSES ARE SAFER WHEN BYSTANDERS INTERVENE

***Know My Name* by Chanel Miller**

Emily Doe – victim of Stanford University varsity swimmer convicted of sexually assaulting her behind a dumpster when she was unconscious; 2 bystanders intervened

Bystanders Play Critical Roles

- As observers
- As interveners
- In reducing risks
 - Sexual harassment
 - Sexual assault
 - Dating violence
 - Domestic violence
 - Stalking

Bystander Intervention Essentials

- Be aware of individuals and circumstances
- Err on the side of intervention
- Be alert to signs of danger (persons or environments)
- Do not ignore odd circumstances
- Avoid defaulting to stereotypes
- Recognize the signs of sexual assault
 - Most victims know their attacker
 - Perpetrators choose targets
 - Perpetrators manage targets

Intervention Strategies

- Eyes wide open
- Have a plan
- Divert the intended victim
- Distance the perpetrator
- Delegate to a person of authority
- Confront the perpetrator

Reducing Bystander Risk

- Call campus security or law enforcement immediately
- Be loud
- Know your limitations
- Carry emergency contact information at all times

Don't Be Shy!

For more answers or additional information, contact Tulsa Tech's Title IX Coordinator:

Tulsa Technology Center
Pam Winterscheidt, Chief Human Capital Officer, Director of Equal Opportunity
6111 E. Skelly Drive
P.O. Box 477200
Tulsa, OK 74147-7200
(918) 828-5000; pam.winterscheidt@tulsatech.edu



**TITLE IX – SEX DISCRIMINATION AND SEXUAL HARRASSMENT
Training for Tulsa Technology Center Title IX Responsible Personnel**

Karen L. Long¹

March 11, 2021

NOTES

The Guiding Principles of Title IX and U.S. Department of Education’s Final Rules

- Sexual Harassment recognized as Sex Discrimination;
- Supportive measures for complainants and respect for complainant’s decisions (for example to file or not to file a complaint);
- Fair grievance (hearing) process that ensures both parties have access to claims, defenses, supporting information and materials, and equivalent notice of all parts of process (includes presumption that the respondent is not responsible for claimed conduct);
- Appeal process available to complainant and respondent; and
- Assurance of non-discrimination, free speech protection, and due process.

Key Definitions

Actual Knowledge— notice of sexual harassment or allegations of sexual harassment to Tulsa Tech’s Title IX Coordinator, or any official of Tulsa Tech who has authority to institute corrective measures on behalf of Tulsa Tech, or (for secondary students) to any employee.

Complainant—person alleged to be the victim of conduct that could constitute sexual harassment.

Formal Complaint—a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that Tulsa Tech investigate the allegation of sexual harassment.

Respondent—person who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual Harassment—

- A Tulsa Tech employee conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Tulsa Tech’s education programs or activities; or
- Any of the following as defined in federal law: sexual assault as defined in the Clery Act; dating violence as defined in the Violence Against Women Act

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(VAWA); domestic violence as defined in the VAWA; stalking as defined in the VAWA.

Supportive Measures—nondisciplinary, nonpunitive individualized services offered as appropriate and reasonably available (without fee or charge) to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. to restore or preserve equal access to programs or services.

Key Title IX Personnel

Title IX Coordinator

- Responsible for Tulsa Tech-based day-to-day compliance with Tulsa Tech's Title IX policy;
- Develops, monitors, and oversees compliance with policies, procedures and practices;
- Receives reports or complaints of sex discrimination and harassment;
- Contacts the complainant promptly, discusses and offers supportive services and explains the Title IX grievance process;
- Determines whether complainant wishes to file a formal complaint;
- Provides written notice to the complainant and respondent of the grievance process, informal resolution process, and allegations (with details);
- Explains that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
- Notifies the parties of the right to have an advisor to assist them and to inspect and review evidence;
- Explains that knowingly making false statements or providing false information is a violation of the code of conduct and subject to disciplinary action;
- Makes determination regarding a formal investigation;
- Makes determination regarding mandatory or permissive dismissal;
- Ensures that training is delivered to all individuals affected by Tulsa Tech's Title IX policy at all levels;
- Protects all reporters, complainants, respondents, witnesses and others from retaliation for reporting sexual harassment or participating or refusing to participate in any Title IX grievance process; and
- Documents, collects and retains records of all sexual harassment reports, investigations, hearings, and appeals.

Investigator

- Explains to both parties the investigative process and that the burden of gathering evidence and burden of proof is with Tulsa Tech—not the parties;
- Meets personally with complainant (subject to extraordinary circumstances);
- Meets personally with respondent (subject to extraordinary circumstances);
- Presumes that respondent is not responsible for the alleged conduct;

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- Collects physical and documentary evidence;
- Meets personally with witnesses (subject to extraordinary circumstances);
- Provides equal opportunity for both parties to present witnesses and evidence;
- Provides written advance notice to parties and their advisors of date, time, participants, purpose, location, etc. of investigative interviews, evidence obtained and opportunity to respond;
- Provides parties and their advisors opportunity to review all evidence related to the allegations in the complaint at least 10 days prior to the completion of the final investigation; and
- Prepares written report that fairly summarizes the relevant evidence and provides report to parties/advisors for review and written response at least 10 days before a hearing or determination of responsibility.

Informal Resolution Facilitator

- Informs parties in writing of the mediation process and their respective rights;
- Requires filing of a formal complaint of discrimination and no issue of sexual violence; not available when the Complaint alleges a Tulsa Tech employee harassed a student or sexual violence involved;
- Makes clear that participation is completely voluntary and requires the freely given written consent of both parties;
- Works with parties to mediate issues and differences in the hope of arriving at a mutually agreeable resolution;
- If parties agree to voluntary resolution, a written agreement is prepared, provided to both parties, and signed by both parties;
- If both parties are not in agreement, the complaint is returned to the Title IX Coordinator for referral to the Hearing Officer for a hearing;
- No appeal is available because mediation requires agreement or no resolution is reached; and
- If resolution not reached, neither party may introduce evidence of the voluntary resolution process during the hearing.

Hearing Officer Obligations

- Promptly discloses any conflict of interest that would make the Officer ineligible to serve as the Hearing Officer including any conflict that develops after the live or non-live hearing begins;
- Avoids making a judgment prior to conducting the hearing and receiving the relevant and admissible testimony and evidence;
- Promptly reports to the Title IX Coordinator any third-party effort to improperly influence a decision prior to or during the live or non-live hearing;
- Listens carefully to all testimony presented during the live or non-live hearing, reviews all documents or other evidence received, and asks questions to clarify areas of confusion;
- Ensures a clear understanding of the incident or events in question before deliberations and decision reached and transmitted to parties;

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- Decides the outcome and sanctions (if applicable) based on the evidence presented, hearing notes, Tulsa Tech policy and credibility assessments; and
- At the conclusion of the live or non-live hearing—provides any notes in a sealed envelope to the Title IX Coordinator for inclusion with all materials related to the Title IX complaint.

Hearing Officer Actions

- Responsible for written communications to parties regarding the date, time, location of hearing, complainant's rights, respondent's rights and other particulars of the hearing;
- Determines, based on classification of students involved as complainant and respondent, whether hearing will be live or non-live;
- Ensures that only relevant, admissible evidence is introduced during the live or non-live hearing:
 - Relevant evidence is evidence tending to prove or disprove the claims or defenses
 - Questions and evidence regarding the complainant's sexual predisposition or prior sexual behavior are not relevant unless: such questions or evidence is to prove that someone other than the respondent committed the conduct alleged; that the conduct alleged by the complainant was consensual; students are not under 16; and questions and evidence concern specific incidents of the complainant's prior sexual behavior with the respondent
 - If evidence is deemed not relevant, the hearing officer must explain why the testimony or evidence was not relevant
 - Generally, a party will not be permitted to seek, rely upon or use questions or evidence that constitutes or seeks disclosure of information protected under a legally recognized privilege unless the person holding the privilege has waived it (e.g., privileges may involve a physician, psychiatrist, psychologist, lawyer or other recognized privilege)
- Manages and administers the live hearing process in a fair and impartial manner (live hearings will typically be conducted when complaints involve adult students but do not involve secondary students):
 - Opening statements
 - Complainant's testimony and evidence
 - Cross-examination (by respondent's advisor)
 - Questions by hearing officer
 - Respondent's testimony and evidence
 - Cross-examination (by complainant's advisor)
 - Questions by hearing officer
 - Deliberations of hearing officer
 - Determination of outcome based on preponderance of evidence standard (more likely than not to have occurred or not occurred). If determination is that respondent is not responsible for violation of the policy—then complaint will be dismissed—subject to the right of appeal
 - If the determination is that respondent is responsible for violation of the Title IX policy—then hearing officer will identify sanctions

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- Notifies parties in writing of outcome of live hearing by certified mail (or other agreed upon notice) within 5 business days after the live hearing concludes; and
- Notifies both parties of right to appeal and appeal procedures.

Non-Live Hearing for Complaints Involving Secondary Students

- Hearing Officer, in consultation with Title IX Coordinator, determines whether a hearing involving secondary students should be conducted as a live or non-live hearing;
- Hearing Officer communicates with both parties regarding the procedures for a non-live hearing, the rights of both parties to submit testimony and evidence in writing; the right of both parties to receive all testimony and evidence submitted in writing; and the right of each party to respond to the other party's submission of testimony and evidence;
- Hearing Officer provides at least 10-days for each party to respond to the other party's testimony and evidence (a party can waive the 10-day time period to respond as long as the waiver is provided to the Hearing Officer in writing);
- Hearing Officer considers only relevant, admissible evidence in reaching a decision;
- Hearing Officer ensures that parties to the non-live hearing have all available testimony and evidence and an opportunity to fully respond to all testimony and evidence submitted;
- Hearing Officer's written decision addresses all issues presented, is provided to both parties within the same time period, and includes an explanation of the analysis and conclusions reached regarding each issue presented.

Appellate Decision-Maker

- Receives written appeal or appeals (must be received within 5 calendar days of appealing party's receipt of hearing decision);
- Provides written acknowledgement of receipt of appeal and provides description of appeal procedures;
- Reviews appeal content to determine whether the appeal cites at least one of the required appeal criteria and criteria cited is adequately supported:
 - Hearing was not conducted in conformity with prescribed procedures and substantial prejudice to the complainant or respondent resulted from this
 - New evidence which could have substantially affected the outcome of the hearing discovered following the hearing and evidence was not available at the time of the hearing
 - Sanction determined by Hearing Officer inappropriate for the violation (only utilized when a sanction is inherently inconsistent with Tulsa Tech's procedures or precedent)
- Reviews the entire record of the original live or non-live hearing (including documents and other evidence);
- Enters decision to affirm or not to affirm the Hearing Officer;

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- If decision of the Hearing Officer is not affirmed, determines whether to:
 - Return the matter to the Hearing Officer with instructions for reconsideration
 - Return the matter to the Hearing Officer with instructions related to changes or additions to sanctions
 - Reverse the decision of the Hearing Officer and enter new decision
 - Affirm decision of the Hearing Officer but adjust sanctions (may be more or less harsh)
 - Reverse decision of Hearing Officer and order a new hearing to be conducted by a different Hearing Officer
 - Take additional or different actions consistent with the issues on appeal
- Communicates to parties (within 10 calendar days of receiving the Hearing Officer's decision) final or other decision (if not final).

In Summary

- Develop and maintain a thorough knowledge of Tulsa Tech's Title IX policy
- Understand key Title IX roles and how they relate to one another
- Address reports or complaints of sex discrimination and sexual harassment promptly and without prejudice regarding innocence or guilt
- Identify and offer supportive measures appropriate to the incident or events
- Treat parties fairly and equitably
- Maintain a complete record of actions taken in response to report or complaint of Title IX violation
- Communicate clearly and in writing at all stages of the process