

Title IX

The Statute

- 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 receiving Federal financial assistance.

Scope of Title IX

- Includes: Title IX applies to all institutions that receive federal financial assistance from ED
- K-12 and charter school
- Postsecondary institutions
- Museum
- Libraries

Title IX applies to:

- Recruitment, admissions & counseling
- Financial assistance
- Athletics
- Sex-based harassment
- Treatment of pregnant and parenting students
- Discipline
- Single-sex education
- Employment

Enforcement of Title IX

- ED's Office of Civil Rights (OCR) enforces Title IX
- OCR evaluates, investigates & resolves complaints alleging sex discrimination
- OCR also conducts compliance reviews to examine potential systemic violations based on other information
- OCR issues guidance to schools, often in the form of Dear Colleague letters, and Qs and As.

Guidance under current administration

2017

- Withdrew previous guidance
 - 2011 Dear Colleague Letter on Sexual Violence
 - 2014 Questions & Answers on Title IX Sexual Violence

September 22, 2017

Issued New Interim Questions and Answers on how to investigate and adjudicate allegations of campus sexual misconduct under federal law

New Guidance

- Although 2011 Guidance rescinded, much of it was based on 2001 Guidance, Title IX regulations & case law such including US Supreme Ct cases.
- No longer required to complete investigation within 60 days.
- Now, must complete it within reasonable time.
- Previously, standard of proof was preponderance of evidence. Now, schools can choose, but must apply it to all student conduct cases.
- <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>

New Q & A's

- Where the school knows or should know of sexual misconduct, the school must determine what occurred and respond
- Each recipient must have a Title IX Coordinator
- Requires interim measures:
 - individualized services offered to either or both the reporting and responding, prior to and/or during an investigation. Includes:
 - counseling,
 - course-related, work, class adjustments,
 - campus escort services,
 - restrictions on contact between the parties,
 - changes in work or housing locations,
 - leaves of absence,
 - increased security and monitoring of certain areas of campus, and other similar accommodations.
 - <https://bartonccc.edu/title-ix/resources>

New Q & A's continued

- Recipients are subject to Clery as well as Title IX
 - Disclose crime statistics
 - Disclose campus security information
- Schools must:
 - adopt and publish grievance for a prompt and equitable resolution of complaints of sex discrimination, including sexual misconduct. 34 C.F.R. § 106.8(b); 2001 Guidance at (V)(D);

New Q & A's continued

SCHOOLS MUST:

- Give notice of procedures, including how to file a complaint
- Apply the grievance procedures to complaints
- Ensure adequate, reliable, impartial, and equitable investigation of complaints, including the opportunity to present witnesses and other evidence
- Follow a reasonably prompt time frame for major stages of the complaint process
- Notify the parties of the outcome of the complaint;
- Provide assurance that the school will take steps to prevent recurrence of sexual misconduct and to remedy its discriminatory effects

August 2018

- At the end of August, a document purporting to be OCR's new Guidance was leaked to New York Times.
- It is widely believe to have been deliberately leaked to gauge public reaction
- OCR has still not released proposed Guidance
- Once released, there will be a 60-day or so public comment period
- After that, OCR will take some time (3-12 months?) to respond to comments and issue final guidance with an implementation deadline

At Barton, who is protected by Title IX?

The easy answer is EVERYONE:

- Employees
- Students
- Visitor, guests
- Vendors
- Business invitees

Who at Barton is bound by Title IX?

The easy answer is almost EVERYONE:

- Students
- Employees
- Visitor, guests
- Vendors
- Business invitees

Are Barton Trustees bound by Title IX?

- Trustees are not employees, but are members of campus community
- Legally, not sure
- Ethically, yes
- 1132: This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, **any member of the campus community**, guest or visitor who acts to deny, deprive or limit the educational or employment benefits and/or opportunities of any member of the campus community on the basis of actual/perceived membership in the protected classes (gender/sex) is in violation of the Barton policy on nondiscrimination.

Title IX Policy at Barton

- Title IX is incorporated into Policy 1132
- Sexual misconduct is a violation of 1132
- Discrimination and harassment based on sex or gender is also violation of 1132

Sexual Misconduct Includes

- Rape
- Sexual Assault
- Non-Consensual sexual contact
- <https://bartonccc.edu/title-ix>

Sexual Exploitation is another form of Sexual Misconduct

- Voyeurism
- Non-consensual recording of another in a sexual or private act
- Exceeding bounds of consent
 - Allowing another to hide in closet & watch
 - Disseminating sexual/intimate photos/recordings without consent
- Prostitution
- Transmitting STD, STI or HIV
- Non-consensually administering to another alcohol or drugs (such as date rape drugs)
- Stalking

Discrimination and Sexual Harassment

- Must arise out of discrimination based on sex or gender
- Hostile work/educational environment must also be based on sex/gender discrimination

Offensive conduct not rising to level of discrimination

- Barton policy 1132 offers a remedy for such offensive conduct:
- Conduct should be addressed through
 - Civil confrontation
 - Remedial actions
 - Education
 - Effective conflict resolution mechanisms