

SUMMARY OF SALIENT POINTS OF 2020 TITLE IX FINAL REGULATION

The regulations mandate changes to the legal bases for and administration of Title IX.

Implementation Date: August 14, 2020

- Live hearings are required for all student and all employee cases involving
 - Sexual harassment involving
 - quid pro quo by an employee,
 - unwelcome conduct determined by a reasonable person to be so severe and persistent and pervasive so it effectively denies the person equal access to the school's program, activity, etc.
 - Sexual assault
 - Domestic violence
 - Dating violence
 - Stalking
- Prior to a final appeal, the presumption of innocence applies
 - both/all parties are treated equally
 - NO punitive or disciplinary interim measures for any party
 - exception when there is danger or risk to our community
 - this takes employees out of at-will status for the duration of the process
- Any time after formal complaint is filed, parties may engage in informal resolution
 - must be 100% voluntary
 - never available where employee sexually harasses a student
 - person conducting this process must be trained
 - Barton is required to appoint an advisor for each party*
 - advisor does not have to be an attorney, even if one party has an attorney
 - advisor must be willing and capable of cross-examining party and witnesses
- All other Title IX regulations are still in effect, as well as
- Also Clery Act, VAWA, and case law
- There are four lawsuits to enjoin the enforcement of these regulations

HEARING

- Barton is required to appoint an advisor for each party*
 - advisor does not have to be an attorney, even if one party has an attorney
 - advisor must be willing and capable of cross-examining party and witnesses
- Hearing is conducted by a panel (usually 3 persons) with one serving as chair
- Only the testimony at this hearing can be considered in making the decision
- If party/witness refuses to be cross-examined, that testimony cannot be considered
- Chair must rule on all questions asked by the advisors as to relevance/admissibility
- Panel reaches decision by majority vote
- Decision must be in writing and describe in detail all the bases and evidence for the decision

SANCTIONS

- Hearing panel also determines sanctions and documents in decision letter
- May be "interim pause" between decision and sanctions for panel to confer with appropriate others

APPEALS

- All decisions are appealable by both students and employees
- Appeals panel hears the case
- Panel can decide to uphold the decision and sanctions, or overturns it, possibly remand it back for further investigation or another hearing
- Panel must fully document its rationale and the evidence supporting it

TRAINING

- All people involved in this process are required to be trained
- TIX Coordinator, investigators, advisors, hearing panels, appeals panels
- All training materials are to be posted online by August 14
- Must eliminate all possible bias and be free of a conflict of interest for
 - All those involved in Title IX process
 - All training materials
 - All policies and procedures
- Live hearing would need at least ten people

MANDATORY NOTICES AND POSTINGS

- Requirement to post statement that Barton does not discriminate on the basis of sex, and that Title IX requires as such
 - on our website, and
 - on all materials sent out by the college