

Recent Trends in Higher Education Law

Northeastern Association of Graduate Schools Conference

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Presentation Outline

1. **Title IX**
2. ADA / Digital Accessibility
3. Questions

Recent Developments in Title IX

- Dear Colleague Letter (DCL) – April 2011
- University of Montana “Blueprint” Resolution Agreements – May 2013
- Clery Act amended by the Violence Against Women Act (VAWA or Campus Save Act) – May 2013
- White House Task Force formed – January 2014
- First Report of WH Task Force – April 2014
- Clery Act / VAWA Final Regulations – October 2014

Title IX: Background

- “No person in the United States shall, on the basis of sex, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal Financial Assistance”
- Enforced by the US Department of Education, Office for Civil Rights (OCR).
- Private right of action for civil lawsuits.

Dear Colleague Letter – April 4, 2011

- Clarified that sexual assault is a form of sexual harassment governed by Title IX
- Clarified role of Title IX Coordinators
- Institutional obligation to investigate and resolve all complaints regarding sexual harassment/assault
 - Even where students request confidentiality
- Created new rules for grievance procedures in sexual harassment and sexual assault cases.
 - Mandated “preponderance of the evidence” standard
 - Equal rights for Complainant and Respondent
 - Prohibits “mediation” in sexual assault cases

Montana “Blueprint” Agreements

- Joint DOE / DOJ investigation of University of Montana’s
- Resolution Agreements in May 2013.
- “A blueprint for colleges and universities to protect students from sexual harassment and assault.”
- Highlights:
 - Interim measures to protect survivors from further harassment (may include interim discipline);
 - Training for students;
 - Training for employees;
 - Climate Surveys;
 - System to track Title IX complaints

Clery Act: Background

- Originally passed in 1990. Amended in 1998, 2008, and 2013.
- Enforced by the US Department of Education, Office of Postsecondary Education (OPE).
- General Requirements:
 - Annual Security & Fire Safety Report
 - 3 years of crime and fire statistics;
 - Over 30 statements of policy on various safety, security, and disciplinary issues.
 - Submit Statistics to Depart. Of Education.
 - Timely Warnings and Emergency Alerts.
 - Daily Crime and Fire Log

Violence Against Women Act

- Amends the Clery Act
- New reportable crimes
- New policy and procedural requirements
- New training requirements for students and employees
- Written notifications to students and employees
- Codifies elements of April 2011 DCL

Clery Act: Covered Offenses

Three categories of reportable offenses

1. Criminal Offenses

- Murder
- Negligent Manslaughter
- Robbery
- Aggravated Assault
- Motor Vehicle Theft
- Arson
- Burglary
- Forcible Sex Offenses (sexual assault)
- Non-Forcible Sex Offenses (incest / statutory rape)
- **Domestic Violence;**
- **Dating Violence;**
- **Stalking**

2. Arrests and Referrals for Disciplinary Action

- Liquor Law Violations
- Drug Law Violations
- Illegal Weapons Violations

3. Hate Crimes

- Any of the criminal offenses listed under # 1 – when victim selected based on race, gender, religion, sexual orientation, ethnicity, disability, national origin or gender identity.
- Also, larceny-theft, simple assault, intimidation, vandalism, & property destruction when committed as a hate crime

Overlap Between Title IX and Clery

- Procedural requirements for handling incidents of sexual assault, domestic violence, dating violence and stalking;
- Mandatory reporting requirements:
 - Title IX – responsible employee
 - Clery – campus security authority
- Training & Notice Requirements
 - Bystander Intervention – NAGS Friday 2:00 pm

White House Task Force

- First Report – April 2014

Key Recommendations

1. Identify the problem

- Encourage voluntary climate surveys in 2014-2015
- DOE to consider mandating climate surveys in 2016

2. Prevention Sexual Assault on Campus

- Existing Clery Act requirements
- Bystander intervention
- Public service announcements

3. Responding Effectively

- Identify Mandatory Reporters
- Identify confidential victim advocates

4. Improve federal enforcement

Recent Trends

- Revised institutional policies on sexual harassment and sexual violence
- Revised procedures for investigating and resolving allegations of sexual harassment, sexual violence
- Full-time professional Title IX Coordinators
- Campus Climate Surveys
- Training and prevention programs for faculty, staff, and students

Presentation Outline

1. Title IX
2. **ADA / Digital Accessibility**
3. Questions

Legal Background

- Two Applicable Federal Laws:
 - Americans with Disabilities Act
 - Section 504 of the Rehabilitation Act of 1973

What is Digital Accessibility?

- Accessibility – the degree to which a product, device, service, or environment is accessible to individuals with disabilities or other special needs.
- “Digital Accessibility” concerns the ability of persons with disabilities to access electronic resources such as the internet, software, mobile devices, e-readers, etc.

Legal Background

- Various laws require institutions of higher education to provide services in an accessible manner.
 - Americans with Disabilities Act
 - Rehabilitation Act of 1973
- State Laws
 - Pennsylvania Higher Education Opportunity Act
 - Pennsylvania Human Relations Act

Americans with Disabilities Act

- Title I – Covers employees.
- Title II – Covers “public entities” such as state and local governments.
 - *“no qualified individual with a disability shall by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”*
- Title III – Prohibits “places of public accommodation” from discriminating on the basis of a disability.

Rehabilitation Act of 1973

- Section 504 - Applies to private institutions that accept federal financial assistance
 - Higher Education – *“No qualified handicapped student shall on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services....”*
 - Accessibility – *“No qualified handicapped person shall, because a recipient’s facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity...”*

Enforcement

- Joint Enforcement by:
 - US Department of Justice, Civil Rights Division
 - ADA, Title III – Private institutions
 - ADA, Title II – Public institutions
 - US Department of Education, Office for Civil Rights
 - ADA, Title II – Public institutions
 - Rehabilitation Act, Section 504 – public and private institutions that accept federal funding.

Examples of Digital Access Issues

- Computer software, websites, and other electronic resources inaccessible to individuals with vision impairments
- Audio/video materials inaccessible to individuals with hearing impairments
- Accessibility of e-readers, tablets, & other portable devices
- Accessibility of MOOCs

Recent Cases

- Arizona State (2010)
 - Kindle DX pilot program
 - National Federation for the Blind / OCR
- Penn State (2011)
 - Course management software, registration system, library catalogue, academic dept. websites, etc.
 - National Federation for the Blind / OCR

WCAG 2.0

- Web Content Accessibility Guidelines 2.0, Level AA
 - <http://www.w3.org/WAI/intro/wcag>
 - Frequently cited by DOJ & OCR
- Examples
 - Provide alternative text to pictures;
 - Provide captions for audio/video content;
 - Color, contrast and text size;
 - Compatibility with screen readers

Resources / Guidelines

- Penn State Accessibility Website
 - <http://accessibility.psu.edu/>
- Website Accessibility Evaluation Tool (WAVE)
 - <http://wave.webaim.org/>
- Follow Web Content Accessibility Guidelines 2.0
- Insert ADA / Section 504 compliance requirements into vendor agreements
- Refer individual issues to the institution's Disability Services Office.

Questions?

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