Council of Executive Officers Meeting
September 16, 2014

TITLE IX OVERVIEW

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INTRODUCTION

• Title IX of the Educational Amendments of 1972 prohibits sex-based discrimination in education programs and activities receiving federal financial assistance.

• Title IX also prohibits gender based harassment, which may include acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

• Sexual harassment, including sexual violence, is a form of sex discrimination covered by Title IX.
EDUCATION PROGRAMS AND ACTIVITIES

• “Education programs and activities” includes all campus operations, including sponsored activities or travel that occur away from the campus.

• Title IX’s protection applies to third parties who participate at campus educational programs or activities.
DEAR COLLEAGUE LETTER

• In April 2011, the Office of Civil Rights issued a “Dear Colleague” letter explaining to schools, colleges and universities their obligations, under Title IX, to take immediate and effective steps to eliminate sexual harassment, including sexual violence.
CUNY CAMPUS RESPONSIBILITIES

• Disseminate notice of nondiscrimination

• Designate a Title IX Coordinator, Public Safety Officer and Chief Academic Officer to address allegations (CUNY Mandatory Protocol)

• Publish grievance procedures for a prompt and equitable resolution
CUNY CAMPUS RESPONSIBILITIES (cont’d)

• Provide interim measures during an investigation if warranted

• If the college determines sexual harassment or violence has occurred, it must take reasonable, timely and effective corrective action tailored to the specific situation
CUNY CAMPUS RESPONSE

• Take immediate and appropriate steps to investigate or otherwise determine what occurred

• Take prompt and effective steps to end any harassment or violence
THE CLERY ACT

• The Clery Act, is a federal law enacted in 1990 for the purpose of providing college and university students with important information about campus crime and security policies at the higher education institutions they attend.
CLERY ACT – OVERLAP WITH TITLE IX

• Complaints investigated by the Title IX Coordinator may be Clery reportable offenses, including:
  • Forcible/non-forcible sex offenses
  • Domestic violence
  • Stalking
  • Any bias/hate related offense (which now includes crimes bases on national origin and gender identity)
Confidentiality Issues

- A witness may request confidentiality in different forms:
  - Don’t report
  - Don’t investigate
  - Investigate, but do not use my name

- We MUST report if it is a Clery reportable offence, but identity is not disclosed in the Annual Security Report

- We can maintain the confidentiality of a victim or the identity of a witness, but other times, we cannot
  - Absolute promises to maintain confidentiality may not be possible
CRIMINAL OFFENSES AND TITLE IX

• The “Dear Colleague” letter states that the school shall inform the complainant of option to file a complaint with law enforcement authorities.

• CUNY’s Sexual Assault Policy urges the victim to file a complaint with public safety and/or local law enforcement.

• The Office of Civil Rights penalized the University of Montana at Missoula for encouraging victims to NOT report sexual assault and other crimes.
## CUNY INTERSECTING POLICIES

<table>
<thead>
<tr>
<th>CUNY Policies</th>
<th>Employee Complainant</th>
<th>Student Complainant</th>
<th>Third Party Complainant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy on Equal Opportunity and Non-Discrimination (Chief Diversity Officer)</td>
<td>Employee may allege workplace harassment based on sex, gender, pregnancy status, sexual orientation or any other protected basis.</td>
<td>Student may allege harassment in the classroom or education program based on sex, gender, pregnancy status, sexual orientation or any other protected basis.</td>
<td>Visitor or other third party may allege harassment by an employee or student based on sex, gender, pregnancy status, sexual orientation, or any other protected basis.</td>
</tr>
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<td>Policy Against Sexual Harassment (Chief Diversity Officer, Title IX Coordinator, SHAIC Coordinator)</td>
<td>Employee may allege workplace harassment involving harassment involving unwelcome conduct of a sexual nature.</td>
<td>Student may allege harassment in the classroom or educational program involving unwelcome conduct of a sexual nature.</td>
<td>Visitor or other third party may allege harassment by an employee or student involving unwelcome conduct of a sexual nature.</td>
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## INTERSECTING POLICIES (cont’d)

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<td>Policy Concerning Sexual Assault, Stalking and Domestic and Intimate Partner Violence Against Students <em>(Title IX Coordinator, Chief Student Affairs Officer, Public Safety Officer)</em></td>
<td>Not applicable <em>(Legal Affairs now revising current policy to cover employees).</em></td>
<td>Student may allege unwelcome conduct of a sexual nature, including assault and stalking, by a student or employee.</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Campus and Workplace Violence Prevention Policy <em>(Public Safety Officer, Campus Workplace Violence Advisory Team (WVAT)</em></td>
<td>Employee may allege threats and/or acts of violence in the workplace by an employee, student, family or member of the public.</td>
<td>Student may allege threats and/or acts of violence in University property by an employee, student, family or member of the public.</td>
<td>Not applicable</td>
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<td>Domestic Violence and the Workplace Policy (Public Safety Officer, Campus Liaisons to NYS Office for the Prevention of Domestic Violence)</td>
<td>Employee may seek protection in the workplace against harassment, threats or abuse by a domestic partner.</td>
<td>Not applicable (Legal Affairs now revising current policy to cover students).</td>
<td>Third party may allege that a CUNY employee is using job related authority or resources to threaten, harass or abuse a domestic partner; or assisting an abuser in locating or engaging in domestic violence against a victim.</td>
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</table>
• Intent is to provide greater clarity about requirements outlined in the “Dear Colleague” letter
• Anonymous campus sexual assault surveys every 3 years
• Sexual assault reports remain confidential
• Department of Education (DOE) published a comprehensive list of colleges and universities (55) that are being investigated for how they handle sexual harassment and assault complaints

• On July 3, 2014, DOE added 12 additional colleges and universities to their investigation list
MALE STUDENT RESPONSE TO TITLE IX ACCUSATIONS
MARCH 21, 2014

- A few male students unsuccessfully sued their institutions under Title IX claiming discrimination on the basis of gender
- A male student can file discrimination based on due process violations (i.e. Xavier University) now proceeding to the discovery phase
HIGHLIGHTS OF UPCOMING REVISED CUNY POLICY ON SEXUAL HARASSMENT AND SEXUAL VIOLENCE FALL 2014

• Policy on Equal Opportunity and Nondiscrimination (including pregnancy) and other bases under federal, state and local law
• Workplace Violence and Domestic Violence in the Workplace
• Employees will be referred to services available through CUNY’s Work/Life Program
HIGHLIGHTS OF UPCOMING REVISED CUNY POLICY ON SEXUAL HARASSMENT AND SEXUAL VIOLENCE
FALL 2014

• Students may also report incidents to Residence Life or Wellness Center Staff
• Visitors may report incidents to Title IX Coordinator or Public Safety
• Employees may report incidents to Title IX Coordinator or Public Safety
HIGHLIGHTS OF UPCOMING REVISED CUNY POLICY ON SEXUAL HARASSMENT AND SEXUAL VIOLENCE
FALL 2014

• Other responsible employees (required reporters) that have the duty to report incidents include:
  – All Athletic Staff
  – Department Chairpersons
  – All Human Resource Staff
  – Advisors to Student Groups

• Bystanders and Other Community Members

• Article XV of CUNY Bylaws (Student Disciplinary Procedures, etc.)
END OF PRESENTATION