TITLE IX

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AGENDA

✓ Statutory regulatory requirements and Office for Civil Rights (OCR) guidance ("Dear Colleague" Letter)

✓ Scope of Title IX Coverage

✓ Bottom Line — Institutional obligations

✓ UNH Reporting Protocol (flow chart) for Faculty/Staff - reporting responsibilities on reports of sexual misconduct

✓ UNH Harassment, Discrimination and Bias Violence Resources

✓ OCR Title IX Resources
Title IX of the Education Amendments of 1972 (Title IX), prohibits discrimination on the basis of sex.

Title IX provides that “no person...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.”
Title IX’s prohibition against sex discrimination includes both sexual harassment and sexual violence of students by faculty, staff and other students. [Title VII covers applicants, employees and guests]

Title IX does not prohibit discrimination on the basis of sexual orientation. Nonetheless, sexual harassment or violence directed at a GLBTQA student that is sufficiently severe may constitute actionable sexual harassment under Title IX.

- **EXAMPLE:** Group of male students targets a gay student for physical sexual advances; the behavior is serious enough to deny or limit the student’s ability to participate in or benefit from UNH’s programs etc. UNH must respond promptly and effectively in accordance with UNH’s Discrimination, Discriminatory Harassment Policy.
**SEXUAL HARASSMENT DEFINED**

- **Unwelcome conduct** of a sexual nature
  - includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.

- **Student-to-student harassment:**
  - creates hostile environment if conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program.

The more severe the conduct, the less need there is to show a repetitive series of incidents to prove hostile environment, particularly if the harassment is physical (e.g. rape = hostile environment)
Sexual violence is a form of sexual harassment prohibited by Title IX.

- Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol.

- An individual also may be unable to give consent due to an intellectual or other disability.

- May include rape, sexual assault, sexual battery, and sexual coercion.
THE “DEAR COLLEAGUE” LETTER (DCL) ISSUED BY THE OFFICE FOR CIVIL RIGHTS


❖ In reality, it **adds many requirements that change the way institutions must respond to and investigate sexual assault allegations.**

❖ Consequently, institutions need to review and revise their protocols, policies and procedures to ensure DCL compliance  
   [refer to UNH Protocol Flow Chart and Resources, slide 14]
THE DCL MANDATES that:

- Institutions respond promptly to complaints of sexual harassment, including sexual assault.
- Each institution should disseminate widely its written procedures for responding to these complaints, and
- Title IX coordinator is informed of all complaints
OCR Requirements for Title IX Coordinators

Responsibilities

• Be available to meet with students who believe sexual harassment or assault has occurred
• Ensure that complaints are handled through consistent practices and standards
• Upon receiving notice of potential acts of sexual harassment or assault, either personably investigate the incident or oversee the investigation
• Provide assistance to the institution’s law enforcement employees on appropriate responses to reports of sexual violence
• Review all complaints received to identify and address any patterns or systemic problems.

UNH’s Title IX Coordinator

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I. Protects students from sexual harassment in UNH’s educational programs, services and activities, including:

✓ All academic, educational, extracurricular, athletic, and other programs of the institution

✓ On-campus, off-campus, in transit, sponsored at other locations, etc.
II. Institutions may have obligation to respond to student-on-student sexual harassment that initially occurred off campus and outside institution’s education program or activity

✓ Institution “must process the complaint in accordance with its established procedures.”

✓ Should consider and address on-campus continuing effects of off-campus sexual harassment (e.g., on-campus retaliation by alleged harasser or friends)
III. Title IX protects third parties from sexual harassment or violence in an institution's education programs and activities

✓ E.g.: a high school student participating in a college's recruitment program, a visiting student athlete, and a visitor in a school's on-campus residence hall

IV. Title IX prohibits discrimination/harassment by faculty, staff
V. Title IX prohibits gender – based harassment, including:

✔ Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, even if those acts do not involve conduct of a sexual nature

✔ Discriminatory sex stereotyping (e.g., harassment of GLBTQA students)
1. If Institution knows or reasonably should know about sexual harassment (including sexual violence) of a student that creates a hostile environment, Title IX requires immediate action to:

- Stop the harassment
- Prevent its recurrence
- Address its effect/impact

Liability if you do not report to the institution’s designated authority(ies) (refer to UNH Protocol flow chart, and UNH resources, slide 14)

AT UNH THAT’S Chief of Police, PAUL DEAN AND DONNA MARIE SORRENTINO
2. Must take action when receive a complaint or otherwise learn of an incident of sexual harassment or assault

3. At the same time, have to be equitable to, and respect the right of, both parties (complainant and respondent—due process)

4. Should review internal process with complainant and, in the case of an alleged sexual assault, make clear the individual right to file a criminal complaint (opp. to take advantage of)

5. Responding to and investigation of complaints must be prompt and impartial, and institutions may not avoid or postpone them because police are conducting a criminal investigation.
UNH REPORTING PROTOCOL AND RESOURCES

✓ UNH reporting requirements (Schneider Supreme Court case) for Faculty/Staff responsibilities on reports of employee on student sexual harassment (including sexual violence)
  http://www.unh/affirmativeaction/title-ix

✓ UNH reporting protocol (flow chart) for Faculty/Staff reporting responsibilities on reports of student on student sexual harassment (including sexual violence) http://www.unh/affirmativeaction/title-ix

✓ UNH Harassment, Discrimination and Bias Violence Resources http://www.unh/affirmativeaction/title-ix

FOR A MORE EXPANSIVE LISTING OF CAMPUS RESOURCES GO TO http://www.unh/affirmativeaction/resources
OCR TITLE IX RESOURCES

- April 2011 OCR Dear Colleague Letter: http://www2.ed.gov/about/offices/list/ocr/letters/collague-201104.pdf
- OCR 2001 Revised Sexual Harassment Guidance: http://www2.ed.gov/about/offices/list/ocr/docs/shguidance.pdf
- 2010 Dear Colleague letter on Harassment and Bullying: http://www2.ed.gov/about/offices/list/ocr/letters/collague-201010.pdf

For a more expansive listing of state and national resources go to http://www.unh/affirmativeaction/resources