

We're All in This Together: What the New Title IX Regulations Mean for All UNC Charlotte Community Members

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Sarah Edwards, Associate General Counsel
Dr. Michelle Reinken, Director of Title IX Compliance

Agenda

- ▶ Background/Context
- ▶ New Title IX Regulations/University Policy 504
- ▶ What Hasn't Changed
- ▶ Post-January 20, 2021
- ▶ Questions



Background/Context

Background/Context

- ▶ What is “the law” on Title IX (or any other subject)?
 - ▶ Statute = law passed by Congress
 - ▶ Regulations = rules enacted by an agency (DHHS, DOJ, DOL, DOD, etc.) that interpret Congress’s statute
 - ▶ Guidance = opinion letter by an agency regarding its current enforcement standards



Background/Context

- ▶ Title IX statute (1972) → “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.”
- ▶ Title IX regulations (1975)
- ▶ Guidance documents (1976-2019)
- ▶ NEW Title IX regulations (2020)

Background/Context

- ▶ 2011-2016: Obama guidance documents and enforcement
- ▶ 2017: Trump administration rescinded guidance documents
- ▶ 2018-present:
 - ▶ Proposed regs released in November 2018
 - ▶ More than 100,000 comments submitted
 - ▶ Final rule issued on May 6, 2020 (accompanied by 2000 pages of preamble)
 - ▶ Implementation deadline of August 14, 2020



Overview of New Regs

The New Regulations: Main Points

- ▶ Scope of Title IX has been narrowed
 - ▶ University can (and will) still address alleged misconduct that falls outside the scope of the new Title IX
- ▶ Procedural requirements have increased
 - ▶ If alleged misconduct falls outside the scope of Title IX, it will be addressed by other university policies (likely UP 406 or UP 502)
- ▶ Title IX regulations clearly apply to faculty and staff as well as students

The New Regulations: Main Points

- ▶ At least in the student context, public institutions in North Carolina were in pretty good shape
 - ▶ Already providing robust support for both parties
 - ▶ Already providing draft reports for review, lots of notice, etc.
 - ▶ Already utilizing live hearings, cross-examination, attorneys, etc.
- ▶ University Policy 504, Title IX Grievance Policy
 - ▶ Effective August 14, 2020
 - ▶ Available at legal.uncc.edu/policies/up-504

The New Regulations: Coverage

- ▶ New definition of sexual harassment:
 - ▶ (1) *Quid pro quo* harassment (“this for that”)
 - ▶ (2) Hostile environment harassment
 - ▶ Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the University’s education program or activity
 - ▶ (3) Sexual assault, dating violence, domestic violence, or stalking
- ▶ University still has Title VII obligations (for employees) using different sexual harassment definition

The New Regulations: Coverage

- ▶ New jurisdictional requirements:
 - ▶ Within university's education program or activity AND
 - ▶ Against a person in the United States
- ▶ Education program or activity:
 - ▶ Locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University

The New Regulations: Response

- ▶ University's obligations in response to a report:
 - ▶ Promptly contact the complainant to offer support and explain options
 - ▶ Treat both parties equitably
 - ▶ Follow its policies for fair and impartial investigations and resolutions
- ▶ University also may:
 - ▶ Remove respondent on emergency basis if immediate threat to physical health or safety of any student or other person, or
 - ▶ Place an employee respondent on administrative leave

The New Regulations: Formal Complaint

- ▶ University must investigate formal (written & signed) complaints from complainant or from Title IX Coordinator
- ▶ Title IX Coordinator must decide whether formal complaint meets requirements under Title IX to proceed
 - ▶ Certain mandatory dismissal grounds (conduct could still be addressed through other policies)
 - ▶ Other permissive dismissal grounds, such as withdrawal of the complaint or leaving employment/enrollment

The New Regulations: Informal Resolution

- ▶ Universities may facilitate an informal resolution process, like mediation, at any time prior to reaching a determination
 - ▶ Still requires formal complaint
 - ▶ Completely voluntary
- ▶ UNC Charlotte will not require face-to-face interaction for its informal resolution process
- ▶ Cannot use for student allegations against an employee

The New Regulations: Formal Resolution

- ▶ Robust investigation with many procedural requirements
- ▶ If no informal resolution, must hold a live hearing
- ▶ University cannot rely on any person's testimony unless person submits to live cross-examination by an advisor
 - ▶ Can be via technology as long as person can be simultaneously seen and heard
- ▶ If party does not have advisor, University must provide one (only for cross-examination purposes)

The New Regulations: Appeals

- ▶ Grounds for appeal of determination on responsibility:
 - ▶ Procedural irregularity that affected the outcome of the matter, including violation of 700.4.1 for student Respondents;
 - ▶ New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - ▶ The Coordinator, Investigator(s), or hearing officer(s) had a conflict of interest or bias that affected the outcome of the matter.

What Hasn't Changed

Title IX Office – We're Moving!!



**Dr. Michelle
Reinken**

Director of Title IX
Compliance



**Alex
Tompkins**

Case Manager



Christine Weigel

Lead Investigator



**Whitney
Badramraju**

Case Manager



Carrie Lindquist

Administrative
Support
Associate



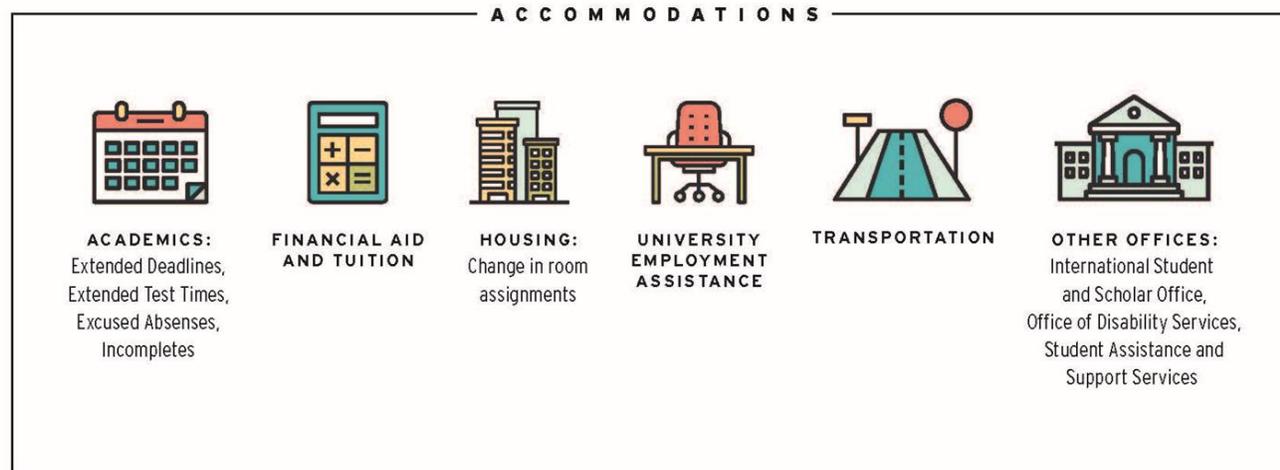
University Policies



- ▶ University Policy 501, Nondiscrimination
 - ▶ Don't discriminate on the basis of sex (or any other protected status)
- ▶ University Policy 504, Title IX Grievance Policy
 - ▶ Applies to students, faculty, and staff if Title IX definitions/jurisdiction are met
- ▶ University Policy 406, Code of Student Responsibility
 - ▶ Applies to students if Title IX definitions/jurisdiction not met
- ▶ University Policy 502, Sexual Harassment and Interpersonal Violence
 - ▶ Applies to most faculty and staff if Title IX definitions/jurisdiction not met

Support for People Involved

- ▶ Privacy is respected (unless disclosure is necessary)
- ▶ University provides supportive measures even in the absence of a formal complaint



- ▶ Supportive measures available for both complainants and respondents

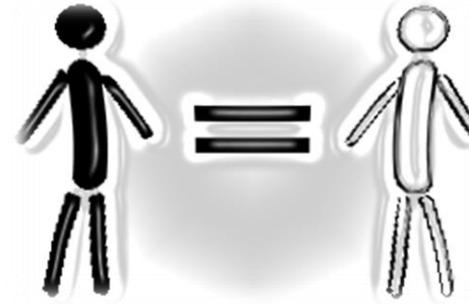
Deference to Individuals

- ▶ Complainants may choose:
 - ▶ Whether to move forward with a formal complaint
 - ▶ Whether to report an incident to police
- ▶ Confidential resources:
 - ▶ Center for Counseling and Psychological Services (CAPS)
 - ▶ Student Health Center
 - ▶ Athletics psychologist
 - ▶ Employee Assistance Program (EAP)



Equal Rights and Opportunities

- ▶ Access to supportive measures
- ▶ Ability to present witnesses and other evidence
- ▶ Ability to have advisor present
- ▶ Clear notice of charges, process, etc.
- ▶ Opportunity to inspect and review all relevant evidence (now includes all evidence gathered)
- ▶ Opportunity to review entire draft report and provide feedback before it is finalized
- ▶ Opportunity to question evidence and witnesses
- ▶ Simultaneous notification of outcome
- ▶ Ability to appeal decision



Other

- ▶ Respondent is presumed not responsible until proven otherwise
- ▶ Standard of evidence is preponderance of the evidence (*i.e.* more likely than not)
- ▶ All university officials involved in the process are unbiased/conflict-free and regularly trained
- ▶ Retaliation (for reporting or participating) is prohibited
- ▶ Your responsibilities → report alleged sexual or interpersonal misconduct to Title IX Office (even though “Responsible Employee” label is gone)



Reminder

- ▶ Remember that VAWA still applies
 - ▶ For all sexual assault, dating violence, domestic violence, and stalking cases (regardless of whether UP 504, UP 406, or UP 502)
 - ▶ Covers students and employees
- ▶ Main VAWA requirements:
 - ▶ Accommodations/interim measures
 - ▶ Written information regarding rights (IPV Resource Guide)
 - ▶ Education for incoming students and new employees
 - ▶ Equal rights/opportunities (to have advisor/attorney, to present evidence, to view and question evidence, to receive decision, etc.)
 - ▶ Annual training for all officials involved



Post-January 20, 2021

What's Next?

- ▶ Biden's campaign website: "The Biden Administration will restore the Title IX guidance for colleges, including the 2011 Dear Colleague Letter, which outlined for schools how to fairly conduct Title IX proceedings."
- ▶ Remember legal hierarchy
 - ▶ Statute = law passed by Congress
 - ▶ Regulations = rules enacted by an agency (like Dep't of Education!) that interpret Congress's statute
 - ▶ Guidance = opinion letter by an agency regarding its current enforcement standards



Options for a New Administration

- ▶ Some options:
 - ▶ Go through (long!) notice-and-comment process to rescind recent Title IX regulations
 - ▶ Issue guidance/interpretation of regulations that softens some of the edges
 - ▶ Just not enforce the regulations
- ▶ All options have pros and cons
- ▶ No option results in immediate and significant changes to UNC Charlotte policy

Questions?